VOLUME I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1960

No. 306

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, APPELLANT,

vs.

UNITED STATES, ET AL.

No. 307

EZRA TAFT BENSON, SECRETARY OF AGRICULTURE OF THE UNITED STATES, APPELLANT,

vs.

UNITED STATES, ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

FILED AUGUST 9, 1960
PROBABLE JURISDICTION NOTED OCTOBER 17, 1960

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 19[illegible]

No. 306

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, APPELLANT,

vs.

UNITED STATES, ET AL.

No. 307

EZRA TAFT BENSON, SECRETARY OF AGRICULTURE OF THE UNITED STATES, APPELLANT,

vs.

UNITED STATES, ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

VOLUME I

	Original	Print
Record from the United States District Court for the Eastern District of Wisconsin		
Complaint	7	1
Exhibit "A"—Amended complaint filed before the Interstate Commerce Commission in the case of Chicago, Milwaukee, St. Paul and Pacific Railroad Company v. Spokane, Portland and Seattle Railway Company, et al.	23	13
Appendix "A"—List of defendants	37	24

RECORD PRESS, PRINTERS, NEW YORK, N. Y., JANUARY 30, 1961

	Original	Print
Record from the United States District Court for the Eastern District of Wisconsin—Continued		
Complaint—Continued		
Exhibit "A"—Amended complaint, etc.—Continued		
Appendix "B"—Tariffs and territorial application of the joint through rates together with commodities to which such rates are applicable	50	37
Motion of Secretary of Agriculture for leave to intervene	70	43
Complaint of Secretary of Agriculture	72	45
Appendix "A"—Amended petition of Secretary of Agriculture for leave to intervene before the Interstate Commerce Commission in the case of C.M. St. P. and P. RR Co. v. S.P. and S. Ry. Co.	79	50
Appendix "B"—Order of Interstate Commerce Commission of October 27, 1954 in case of CM.St.P. and P. RR Co. v. S.P. and S. Ry. Co.	82	52
Appendix "C"—Order of Interstate Commerce Commission of May 10, 1957 in case of C.M.St.P. and P. RR Co. v. S.P. and S. Ry. Co.	83	53
Motion of Oregon Electric Railway Company and Oregon Trunk Railway for leave to intervene	84	54
Answer of intervening defendants, Oregon Electric Railway Company and Oregon Trunk Railway	87	56
Joint answer of United States of America and Interstate Commerce Commission	93	60
Amended answer of defendants Spokane, Portland and Seattle Railway Company, et al.	99	62
Motion of Chicago and North Western Railway Company, et al., for leave to intervene as intervening defendants	105	67
Joint answer of intervening defendants, Chicago and North Western Railway Company, et al.	107	69
Motion of The National Live Stock Producers Association, et al., for leave to intervene	110	71

	Original	Print
Record from the United States District Court for the Eastern District of Wisconsin—Continued		
Complaint of The National Live Stock Producers Association, et al.	113	74
Order following pre-trial conference order granting leave to intervene and order granting leave to amend answer	117	75
Answer of defendants, Spokane, Portland and Seattle Railway Company, et al. to complaints of Secretary of Agriculture, et al.	120	77
Joint answer of U.S. and I.C.C. to complaints of Secretary of Agriculture, et al.	127	81
Report and Order of the Interstate Commerce Commission of May 10, 1957 in the case of C. M. St. P. & P. RR Co. v. S.P. and S. Ry. Co.	130	83
Order of Interstate Commerce Commission denying petitions for reargument and reconsideration	215	153
Order following pre-trial conference held December 15, 1959	216	154
Opinion, Grubb, J	223	157
Notice of appeal to the Supreme Court of the United States by C. M. St. P. & P. RR Co.	240	171
Notice of appeal to the Supreme Court of the United States by Secretary of Agriculture	247	174
Clerk's certificate (omitted in printing)	260a	176
Order noting probable jurisdiction	260b	177
Proceedings before the Interstate Commerce Commission		
Complaint	261	178
Counsel's note re Appendix "A"	273	187
Joint and separate answer of defendants Spokane, Portland and Seattle Railway Company, Oregon Electric Railway Company, and Oregon Trunk Railway	274	187
Petition of Great Northern Railway Company for leave to intervene	280	191
Reply of complainant to joint and separate answers of defendants	283	192

	Original	Print
Proceedings before the Interstate Commerce Commission—Continued		
Order granting Great Northern Railway Company, et al., leave to intervene	286	194
Petition of the Secretary of Agriculture for leave to intervene	287	195
Order granting Secretary of Agriculture leave to intervene	291	197
Amended complaint	292	198
Counsel's note re Appendix "A" and "B"	305	207
Order permitting filing of amended complaint	306	208
Answer of defendants Chicago and North Western Railway Company and Chicago, Saint Paul, Minneapolis and Omaha Railway Company	307	209
Answer of Chicago, Burlington & Quincy Railroad Co.	310	210
Answer of Chicago, Rock Island and Pacific Railroad Company	312	211
Joint and separate answer of S.P. and S. Ry. Co., Oregon Electric Railway Company and Oregon Trunk Railway to amended complaint	315	212
Amended petition of Secretary of Agriculture for leave to intervene	323	216
Order granting Secretary of Agriculture leave to intervene	326	218
Reply of C. M. St. P. & P. RR Co., to joint answer of S.P. and S. Ry. Co., et al., to amended complaint	327	219
Proposed report of Examiner L. H. Dishman	330	221
Counsel's note re Appendix "A" and "B"	408	281
Secretary's certificate (omitted in printing)	A	282
Transcript of proceedings, June 24, 1954	1	282
Appearances	1	282
Testimony of W. H. Nickels—		
direct	38	284
cross	44	288

	Original	Print
Proceedings before the Interstate Commerce Commission—Continued		
Transcript of proceedings, June 24, 1954—Continued		
Testimony of J. P. Kiley—		
direct	46	289
cross	58	298
redirect	72	308
Paul H. Draver—		
direct	73	309
cross	77	312
redirect	83	316
recross	84	316
Offer in evidence	85	318
Testimony of H. O. Engel—		
direct	86	318
Fred S. Holden—		
direct	143	358
cross	150	363
redirect	159	368
L. R. Pugh—		
direct	161	370
cross	167	374
redirect	172	378
recross	176	381
Transcript of proceedings, June 25, 1954	180	382
Testimony of W. H. Nickels— (recalled)—		
cross	180	383
Offer in evidence	185	386
Testimony of W. H. Nickels—		
redirect	187	388
W. J. Howard—		
direct	191	390
cross	206	401
redirect	223	413
recross	225	414
redirect	226	415

	Original	Print
Proceedings before the Interstate Commerce Commission—Continued		
Transcript of proceedings, June 25, 1954—Continued		
Testimony of Robert B. Taylor—		
direct	244	416
cross	250	420
Virgil Davin—		
direct	258	426
cross	265	431
redirect	270	434
recross	270	435
Lowell Thompson—		
direct	271	435
cross	275	438
redirect	281	442
recross	281	443
redirect	283	444
recross	283	444
Eustace W. Ruddick—		
direct	283	444
cross	291	450
redirect	296	453
L. H. Palmer—		
direct	297	454
cross	308	462
redirect	314	466
Ray Bailey—		
direct	316	468
cross	323	473
S. H. Clarke—		
direct	326	476
cross	332	480
redirect	338	484
recross	339	485
Orlo Bagley—		
direct	339	485
cross	343	488
redirect	345	489
recross	347	491
redirect	349	492

VOLUME II

	Original	Print
Proceedings before the Interstate Commerce Commission—Continued		
Transcript of proceedings, June 28, 1954	353	493
Testimony of S. W. W. Carr—		
direct	353	493
Offer in evidence	360	498
Testimony of S. W. W. Carr—		
cross	361	499
redirect	363	500
recross	366	502
Marvin H. Knutson—		
direct	366	503
cross	374	509
redirect	386	517
recross	388	518
redirect	388	518
George R. Wicker—		
direct	389	520
cross	397	525
J. M. Hutchins—		
direct	402	529
cross	408	533
redirect	421	542
recross	421	543
redirect	423	544
recross	426	546
S. W. W. Carr— (recalled)—		
cross	430	550
redirect	446	561
James L. Shaw—		
direct	451	564
cross	457	568
redirect	461	572
H. S. Sackett—		
direct	462	572
cross	467	576
redirect	476	582

	Original	Print
Proceedings before the Interstate Commerce Commission—Continued		
Transcript of proceedings, June 28, 1954—Continued		
Testimony of H. S. Sackett—		
recross	478	583
redirect	478	584
recross	479	584
Kenneth W. Lovegren—		
direct	480	585
cross	485	589
redirect	498	598
Ed. Kellenberger—		
direct	498	598
cross	506	604
redirect	507	605
William Paul Duncan—		
direct	507	605
cross	511	607
redirect	514	610
recross	515	610
J. M. Alexander—		
direct	515	611
cross	521	615
John G. Ihnet—		
direct	522	616
Transcript of proceedings, June 29, 1954	537	625
Testimony of Dennis O. Selby—		
direct	537	625
cross	543	629
redirect	549	633
George Diehl—		
direct	551	635
cross	555	637
redirect	559	641
Norman L. Neve—		
direct	559	641
cross	566	646

	Original	Print
Proceedings before the Interstate Commerce Commission—Continued		
Transcript of proceedings, June 29, 1954—Continued		
Testimony of Norman L. Neve—Continued		
redirect	568	647
recross	570	649
redirect	574	651
A. J. Jaynes—		
direct	574	652
cross	588	662
redirect	608	676
recross	609	676
redirect	609	677
W. M. Wasser—		
direct	610	677
cross	614	680
redirect	618	683
L. E. Wright—		
direct	618	684
cross	623	687
redirect	625	688
Vern McGuire—		
direct	625	689
cross	629	691
William H. Gee—		
direct	632	693
cross	645	702
redirect	650	706
recross	652	707
Einar Linstad—		
direct	652	708
cross	658	712
R. T. Titus—		
direct	664	716
cross	672	721
redirect	675	724
recross	675	724
redirect	676	725
recross	677	725

	Original	Print
Proceedings before the Interstate Commerce Commission—Continued		
Transcript of proceedings, June 29, 1954—Continued		
Testimony of L. L. Pierce—		
direct	681	728
cross	687	732
redirect	690	735
recross	691	736
redirect	693	737
recross	693	737
Transcript of proceedings, June 30, 1954	698	739
Testimony of H. O. Engel—		
(recalled)—		
cross	698	739
redirect	772	791
recross	773	792
redirect	774	793
Offers in evidence	775	793
Colloquy between examiner and counsel	775	794
Transcript of proceedings, November 9, 1954	821	797
Testimony of A. H. March—		
direct	821	797
cross	831	804
redirect	855	821
recross	858	823
redirect	861	825
Lloyd Meyer—		
direct	863	827
cross	872	833
James W. Devine—		
direct	898	851
cross	905	856
Motion to strike testimony of this witness and ruling thereon	905	857
Testimony of R. L. Bissell—		
direct	919	867
cross	923	870
redirect	926	871
recross	927	872

	Original	Print
Proceedings before the Interstate Commerce Commission—Continued		
Transcript of proceedings, November 9, 1954—Continued		
Testimony of E. F. Maberg—		
direct	932	876
cross	936	879
redirect	944	884
A. F. Bowman—		
direct	948	887
Appearance	956	893
Transcript of proceedings, November 10, 1954	959	893
Testimony of A. F. Bowman—		
direct	959	893
cross	959	894
redirect	963	897
recross	966	899
redirect	984	911
recross	985	912
Lloyd Meyer—		
(resumed)—		
cross	987	913
redirect	1008	928
O. A. Behmer—		
direct	1010	929
cross	1014	932
redirect	1022	938
H. W. Menke—		
direct	1023	939
cross	1029	942
redirect	1039	950
recross	1041	951
R. D. Waller—		
direct	1048	956
cross	1054	961
redirect	1066	969
recross	1071	973
E. J. Balda—		
direct	1080	979
cross	1094	989
Lawrence C. Powers—		
direct	1115	1004

	Original	Print
VOLUME III		
Proceedings before the Interstate Commerce Commission—Continued		
Transcript of proceedings, November 11, 1954	1122	1007
Testimony of John F. Flynn—		
direct	1122	1007
cross	1134	1016
redirect	1171	1041
recross	1179	1047
redirect	1182	1049
Govert A. Dyke—		
direct	1184	1051
W. K. Hettinger—		
direct	1191	1056
cross	1203	1064
J. L. Pease—		
direct	1208	1067
cross	1224	1078
redirect	1250	1097
Offers in evidence	1251	1097
Testimony of J. L. Pease—		
recross	1252	1099
redirect	1260	1104
recross	1261	1105
redirect	1262	1105
recross	1262	1106
W. K. Hettinger— (resumed)—		
direct	1264	1107
cross	1265	1108
redirect	1266	1109
Ernest A. Beilfus—		
direct	1267	1109
cross	1283	1121
redirect	1302	1135

	Original	Print
Proceedings before the Interstate Commerce Commission—Continued		
Transcript of proceedings, November 12, 1954	1307	1136
Testimony of Willard K. Hettinger—		
(resumed)—		
recross	1307	1136
redirect	1321	1146
Offer in evidence	1322	1147
Testimony of H. O. Engel—		
(recalled)—		
direct	1322	1147
cross	1338	1158
redirect	1344	1162
recross	1345	1163
Colloquy between examiner and counsel	1362	1174
Testimony of H. O. Engel—		
(recalled)—		
redirect	1364	1176
C. E. Crippen—		
direct	1365	1177
cross	1390	1197
redirect	1407	1208
recross	1408	1208
J. J. O'Toole—		
direct	1409	1209
Transcript of proceedings, November 13, 1954	1427	1220
Testimony of J. J. O'Toole—		
(resumed)—		
direct	1427	1220
cross	1428	1221
redirect	1447	1235
Transcript of proceedings, February 17, 1955	1470	1239
Testimony of Robert B. Taylor—		
(recalled)—		
cross	1479	1239
Marvin H. Knutson—		
(recalled)—		
cross	1514	1265
redirect	1533	1278
further cross	1536	1280

	Original	Print
roceedings before the Interstate Commerce Commission—Continued		
Transcript of proceedings, February 17, 1955—Continued		
Testimony of Kenneth W. Lovegren—		
(recalled)—		
cross	1538	1282
redirect	1580	1311
recross	1588	1317
Verne McGuire—		
(recalled)—		
cross	1590	1318
redirect	1600	1325
recross	1600	1326
H. S. Sackett—		
(recalled)—		
cross	1601	1326
Ed. Kellenberger—		
(recalled)—		
cross	1602	1327
L. L. Pierce—		
(recalled)—		
cross	1617	1338
J. M. Alexander—		
(recalled)—		
cross	1620	1340
redirect	1638	1353
recross	1640	1354
redirect	1644	1357
W. P. Duncan—		
(recalled)—		
cross	1646	1359
redirect	1655	1365
recross	1656	1366
redirect	1661	1369
recross	1661	1369
Transcript of proceedings, February 18, 1955	1670	1374
Testimony of Dennis O. Selby—		
(recalled)—		
cross	1670	1374
redirect	1674	1377
recross	1675	1378

	Original	Print
Proceedings before the Interstate Commerce Commission—Continued		
Transcript of proceedings, February 18, 1955—Continued		
Testimony of J. M. Hutchins (recalled)—		
cross	1679	1381
redirect	1681	1382
recross	1683	1384
redirect	1683	1384
recross	1684	1385
George R. Wicker— (recalled)—		
cross	1685	1386
redirect	1717	1409
recross	1719	1410
redirect	1720	1411
Einar Linstad— (recalled)—		
cross	1722	1412
redirect	1735	1421
recross	1735	1421
Colloquy between examiner and counsel	1735	1422
Motions to strike from the record the testimony of Mr. Hemphill	1740	1425
Testimony of H. O. Engel— (recalled)—		
cross	1742	1426
Dennis O. Selby— (recalled)—		
cross	1763	1440
Offer in evidence	1775	1449
Testimony of Dennis O. Selby—		
redirect	1780	1452
recross	1781	1454
redirect	1783	1455
E. W. Ruddick— (recalled)—		
cross	1784	1456
H. O. Engel— (resumed)—		
cross	1811	1475

	Original	Print
Proceedings before the Interstate Commerce Commission—Continued		
Transcript of proceedings, February 18, 1955—Continued		
Colloquy between counsel	1829	1488
Testimony of H. O. Engel—		
redirect	1832	1490
cross	1833	1491
redirect	1844	1499
cross	1846	1500
redirect	1854	1506
cross	1855	1507
redirect	1872	1518
VOLUME IV		
Transcript of proceedings, February 21, 1955	1878	1521
Testimony of H. O. Engel—		
(recalled)—		
redirect	1878	1521
L. R. Pugh—		
(recalled)—		
cross	1881	1523
redirect	1912	1543
Offer in evidence	1913	1545
Colloquy between examiner and counsel	1918	1548
Testimony of Jesse C. Hestmark—		
direct	1921	1550
Colloquy between examiner and counsel	1933	1558
Testimony of Jesse C. Hestmark—		
cross	1952	1571
redirect	1958	1576
recross	1964	1580
redirect	1969	1583
George E. Ehlen—		
direct	1972	1585
cross	1991	1599
R. R. Veldman—		
direct	1995	1602
Offers in evidence	2016	1616

	Original	Print
Proceedings before the Interstate Commerce Commission—Continued		
Transcript of proceedings, February 21, 1955—Continued		
Testimony of R. R. Veldman—		
cross	2024	1622
C. R. Jewett—		
direct	2028	1625
cross	2039	1632
Offers in evidence	2041	1634
Testimony of A. E. Wall—		
direct	2042	1634
Offer in evidence	2053	1642
Testimony of A. E. Wall—		
cross	2054	1642
Transcript of proceedings, February 22, 1955	2059	1644
Testimony of H. J. Broughton—		
direct	2059	1644
cross	2067	1650
Jack M. Strickfaden—		
direct	2071	1653
cross	2086	1663
redirect	2093	1668
recross	2094	1669
Peter Ness—		
direct	2094	1669
cross	2103	1675
redirect	2105	1676
Norman Larsen—		
direct	2106	1677
cross	2113	1682
redirect	2116	1684
recross	2118	1685
Gordon T. Shaw—		
direct	2119	1686
cross	2126	1691
C. A. Nelson—		
direct	2129	1693
Offer in evidence	2154	1710

	Original	Print
Proceedings before the Interstate Commerce Commission—Continued		
Transcript of proceedings, February 22, 1955—Continued		
Testimony of C. A. Nelson—		
cross	2156	1711
Robert G. Miller—		
direct	2164	1717
cross	2177	1725
redirect	2182	1729
recross	2183	1729
redirect	2183	1730
recross	2184	1730
Martin B. Edwards—		
direct	2185	1731
cross	2196	1739
Duane Evans—		
direct	2198	1740
cross	2208	1747
redirect	2212	1750
Offer in evidence	2214	1751
Testimony of Frank Daubenspeck—		
direct	2214	1752
cross	2225	1759
Wayne Peterson—		
direct	2226	1760
cross	2232	1764
redirect	2234	1766
James Wilson—		
direct	2235	1766
cross	2246	1774
Transcript of proceedings, February 23, 1955	2258	1781
Testimony of Emory P. Jones—		
direct	2258	1781
cross	2268	1788
John J. Helm—		
direct	2271	1790
cross	2286	1800
redirect	2291	1804
recross	2292	1804

	Original	Print
Proceedings before the Interstate Commerce Commission—Continued		
Transcript of proceedings, February 23, 1955—Continued		
Testimony of George Hennecke—		
direct	2292	1805
cross	2304	1813
redirect	2310	1816
recross	2310	1817
redirect	2310	1817
H. E. Sanderson—		
direct	2311	1818
Offer in evidence	2323	1826
Testimony of H. E. Sanderson—		
cross	2323	1826
T. W. Nordby—		
direct	2328	1829
cross	2337	1836
redirect	2339	1837
Arthur F. Quirin—		
direct	2339	1838
cross	2351	1846
redirect	2355	1849
Offer in evidence	2355	1849
Testimony of Arthur F. Quirin—		
recross	2355	1849
W. R. Bowman—		
direct	2357	1850
cross	2368	1857
S. B. Ferrell—		
direct	2372	1860
cross	2379	1865
Richard E. Davis—		
direct	2380	1866
Offer in evidence	2391	1873
Testimony of Richard E. Davis—		
cross	2391	1874
redirect	2400	1880
recross	2401	1881

	Original	Print
Proceedings before the Interstate Commerce Commission—Continued		
Transcript of proceedings, February 23, 1955—Continued		
Testimony of R. M. Hegwald—		
direct	2401	1881
cross	2410	1887
John W. Kennedy—		
direct	2413	1890
cross	2423	1897
John M. Starr—		
direct	2426	1899
cross	2443	1911
Transcript of proceedings, April 5, 1955	2450	1913
Additional appearances	2450	1913
Testimony of A. F. Bowman— (resumed)—		
cross	2456	1914
Colloquy between examiner and counsel	2466	1920
Testimony of A. F. Bowman—		
cross	2469	1922
redirect	2488	1936
recross	2495	1941
redirect	2495	1941
recross	2495	1941
redirect	2496	1942
B. V. Hancock—		
direct	2497	1943
cross	2510	1952
Offer in evidence	2516	1956
Testimony of L. M. MacPherson—		
direct	2517	1957
cross	2524	1961
redirect	2526	1963
Offer in evidence	2527	1964
Testimony of Ralph Budd—		
direct	2529	1965
cross	2555	1982

	Original	Print
Proceedings before the Interstate Commerce Commission—Continued		
Transcript of proceedings, April 5, 1955—Continued		
Testimony of Charles A. Hart—		
direct	2565	1989
Offer in evidence	2596	2011
Testimony of Charles A. Hart—		
cross	2600	2014
Robert S. MacFarlane—		
direct	2608	2019
cross	2619	2027
VOLUME V		
Transcript of proceedings, April 6, 1955	2625	2029
Testimony of J. H. Poore—		
direct	2625	2029
cross	2647	2045
redirect	2655	2051
recross	2658	2053
V. P. Turnburke—		
direct	2660	2054
cross	2691	2075
Colloquy between examiner and counsel regarding offer in evidence	2694	2077
Testimony of W. H. Thomas—		
direct	2701	2082
Offers in evidence	2732	2104
Testimony of W. H. Thomas—		
cross	2733	2104
redirect	2750	2116
recross	2756	2120
L. W. Albertson—		
direct	2760	2123
Offer in evidence	2779	2137
Transcript of proceedings, April 7, 1955	2782	2138
Testimony of L. W. Albertson—		
cross	2782	2138
R. F. Smith—		
direct	2790	2143
cross	2817b	2164

	Original	Print
Proceedings before the Interstate Commerce Commission—Continued		
Transcript of proceedings, April 7, 1955—Continued		
Testimony of R. F. Smith—		
redirect	2837	2177
recross	2840	2179
redirect	2840	2179
H. D. Lear—		
direct	2842	2180
cross	2861	2193
redirect	2875	2203
recross	2878	2205
redirect	2879	2206
recross	2880	2207
Offer in evidence	2882	2208
Testimony of Walter J. Webb—		
direct	2883	2209
cross	2889	2213
Offer in evidence	2891	2214
Testimony of C. E. Finley—		
direct	2891	2215
cross	2917	2232
redirect	2926	2238
Transcript of proceedings, April 8, 1955	2930	2240
Testimony of C. H. Burgess—		
direct	2930	2240
cross	2937	2244
Offer in evidence	2938	2245
Testimony of William B. Irwin—		
direct	2938	2246
Colloquy between examiner and counsel	2971	2269
Testimony of William B. Irwin—		
direct	2975	2272
cross	2988	2281
Offers in evidence	3027	2309
Testimony of E. S. Ulyatt—		
direct	3028	2310
cross	3043	2320
redirect	3049	2324

	Original	Print
Proceedings before the Interstate Commerce Commission—Continued		
Transcript of proceedings, April 11, 1955	3052	2325
Testimony of William A. Weiss—		
direct	3052	2325
cross	3057	2329
redirect	3061	2331
recross	3062	2332
Offer in evidence	3062	2332
Testimony of Robert O. Small—		
direct	3063	2333
cross	3069	2338
Offer in evidence	3091	2353
Testimony of H. H. Keck—		
direct	3092	2354
cross	3103	2361
redirect	3111	2366
Offers in evidence	3112	2367
Testimony of T. N. Nashland—		
direct	3113	2368
cross	3118	2372
Offers in evidence	3122	2374
Testimony of Clarence F. Croffut—		
direct	3123	2375
cross	3135	2384
redirect	3138	2386
recross	3140	2387
redirect	3143	2389
Offer in evidence	3143	2389
Testimony of Clarence F. Croffut—		
recross	3143	2390
George L. Slorah—		
direct	3145	2390
cross	3159	2400
redirect	3164	2404
recross	3166	2405
Homer B. Bassett—		
direct	3168	2406
cross	3193	2423
Offer in evidence	3200	2428

	Original	Print
Proceedings before the Interstate Commerce Commission—Continued		
VOLUME VI		
Transcript of testimony, April 12, 1955	3204	2429
Colloquy between examiner and counsel	3204	2429
Testimony of Paul K. Byers—		
direct	3206	2430
J. A. Christiansen—		
direct	3208	2432
redirect	3219	2440
cross	3219	2440
redirect	3238	2454
Offer in evidence	3239	2455
Testimony of J. A. Christiansen—		
recross	3240	2455
J. A. Swanson—		
direct	3244	2457
Offers in evidence	3269	2475
Testimony of J. A. Swanson—		
cross	3270	2475
redirect	3278	2481
C. E. Larsen—		
direct	3281	2483
Colloquy between examiner and counsel	3283	2485
Testimony of C. E. Larsen—		
direct	3289	2489
cross	3299	2496
Offers in evidence	3307	2501
Testimony of George F. Ehlen—		
direct	3308	2501
Colloquy between examiner and counsel	3311	2504
Testimony of George F. Ehlen—		
direct	3313	2505
Transcript of proceedings April 13, 1955	3367	2541
Testimony of Frank A. Emme—		
direct	3367	2541
cross	3370	2543
Mark Houston—		
direct	3371	2544
cross	3373	2545

	Original	Print
Proceedings before the Interstate Commerce Commission—Continued		
Transcript of proceedings, April 13, 1955—Continued		
Testimony of George F. Ehlen—		
(resumed)—		
direct	3376	2547
Offers in evidence	3469	2613
Testimony of George F. Ehlen—		
cross	3470	2614
Transcript of proceedings, April 14, 1955	3509	2639
Testimony of George F. Ehlen—		
(resumed)—		
cross	3509	2640
redirect	3535	2658
recross	3543	2664
cross	3547	2667
A. N. Tein—		
direct	3550	2669
Colloquy between examiner and counsel	3615	2714
Testimony of A. N. Tein—		
direct	3623	2719
cross	3673	2755
Offers in evidence	3687	2764
Transcript of proceedings, April 15, 1955	3690	2765
Testimony of W. A. Hart—		
direct	3690	2766
cross	3716	2784
Offers in evidence	3723	2788
Testimony of H. D. Lear—		
direct	3723	2789
cross	3733	2795
redirect	3744	2803
Offers in evidence	3746	2805
Testimony of H. D. Lear—		
recross	3747	2805
Howard V. Rhedin—		
direct	3748	2806
cross	3750	2807

	Original	Print
Proceedings before the Interstate Commerce Commission—Continued		
Transcript of proceedings, April 15, 1955—Continued		
Testimony of Walter J. Webb—		
direct	3752	2809
cross	3756	2811
Offers in evidence	3758	2813
VOLUME VII		
Transcript of proceedings, June 21, 1955	3762	2814
Testimony of W. H. Nickels—		
(recalled)—		
direct	3765	2816
C. E. Crippen—		
(recalled)—		
direct	3775	2823
H. O. Engel—		
(recalled)—		
direct	3818	2853
Colloquy between examiner and counsel	3840	2868
Testimony of H. O. Engel—		
direct	3847	2872
Offers in evidence	3870	2888
Testimony of Paul Wilson—		
direct	3873	2890
Transcript of proceedings, June 22, 1955	3906	2911
Testimony of Paul Wilson—		
(resumed)—		
direct	3906	2911
W. H. Nickels—		
(recalled)—		
cross	3919	2921
redirect	3941	2935
recross	3943	2937
redirect	3972	2957
recross	3974	2958
(recalled)—		
direct	3981	2964
cross	3983	2965
Offers in evidence	3983	2965

	Original	Print
Proceedings before the Interstate Commerce Commission—Continued		
Transcript of proceedings, June 22, 1955—Continued		
Testimony of C. E. Crippen—		
(recalled)—		
cross	3984	2966
Colloquy between examiner and counsel	3996	2974
Testimony of C. E. Crippen—		
cross	4002	2798
Offers in evidence	4020	2990
Testimony of C. E. Crippen—		
cross	4021	2991
redirect	4031	2998
H. O. Engel—		
(resumed)—		
cross	4035	3001
Transcript of testimony, June 23, 1955	4066	3021
Testimony of H. O. Engel—		
(resumed)—		
cross	4066	3021
Colloquy between examiner and counsel	4071	3024
Testimony of H. O. Engel—		
cross	4075	3027
redirect	4134	3067
Paul Wilson—		
(recalled)—		
cross	4140	3071
Offer in evidence of counsel Tolinus's Exhibit No. 138	4144	3074
Colloquy between examiner and counsel	4146	3075
Testimony of Paul Wilson—		
cross	4148	3077
redirect	4199	3112
Colloquy between examiner and counsel	4202	3114

	Original	Print
Proceedings before the Interstate Commerce Commission—Continued		
EXHIBITS:		
No. 1 (Witness Nickels)—Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Finance and Accounting Department, Statement of traffic originating at stations on the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, etc., for the year 1952	4210	3117
No. 3—(Witness Engel)—Statement showing definition of territorial and other terms	4238	3145
No. 18—(Witness Hettinger)—Statement showing estimate of increased revenue on carload traffic shown in Exhibit 1, which would have accrued to CMSTP & P RR Co. during calendar year 1952 if all of such traffic had been interchanged at Spokane, Wash. between Spokane Portland & Seattle Ry. Co. and CMSTP & P RR Co.	4239	3146
No. 22—(Witness Pease)—Statement of rates on sheep, in double-deck carloads from Washtucna, Wash. and Bend, Oregon	4240	3147

[fol. 5] [File endorsement omitted]

[fol. 7]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

Civil Action

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, Plaintiff,

vs.

UNITED STATES OF AMERICA; INTERSTATE COMMERCE COMMISSION; SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY; GREAT NORTHERN RAILWAY COMPANY; AND NORTHERN PACIFIC RAILWAY COMPANY, Defendants.

COMPLAINT—Filed April 2, 1958

I.

Plaintiff, Chicago, Milwaukee, St. Paul and Pacific Railroad Company, (hereinafter called the "Milwaukee"), brings this suit against the United States of America and the Interstate Commerce Commission *et al* to enjoin, annul and set aside the order of the Interstate Commerce Commission of May 10, 1957, made and entered in its Docket No. 31466, *Chicago, Milwaukee, St. Paul and Pacific Railroad Company* v. *Spokane, Portland and Seattle Railway Company, et al.* The Milwaukee has a pecuniary interest in the issues and matters and things involved in this suit. The findings, conclusions and decision of the Interstate Commerce Commission are reported in *Chicago, Mil-*
[fol. 8] *waukee, St. Paul and Pacific Railroad Company* v. *Spokane, Portland and Seattle Railway Company, et al.*, 300 I.C.C. 453. Printed copies of that report, and the record on which it is based, will be made available to members

of the Court. The Commission's order of May 10, 1957, reads as follows:

"ORDER

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D.C., on the 10th day of May, A.D. 1957.

No. 31466

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY

v.

SPOKANE, PORTLAND & SEATTLE RAILWAY COMPANY ET AL.

This proceeding being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been made, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is ordered, That the complaint in this proceeding be, and it is hereby, dismissed.

By the Commission.

Harold D. McCoy,

(Seal) Secretary."

II.

Plaintiff is a corporation organized and existing under the laws of the State of Wisconsin and is a common carrier by railroad transporting persons and property in intra- [fol. 9] state, interstate and foreign commerce within and through the states of Washington, Idaho, Montana, North Dakota, South Dakota, Minnesota, Wisconsin, Michigan, Nebraska, Missouri, Iowa, Illinois, and Indiana.

III.

Jurisdiction of this Court over this cause of action is provided by Title 28, U.S. Code, Sections 1336, 1398, 2284, and 2321-2325, inclusive.

IV.

On February 16, 1954 the Milwaukee filed with the Interstate Commerce Commission a complaint, as amended August 27, 1954, copy of which complaint as amended, is hereto attached and marked Exhibit "A", alleging violations by the Spokane, Portland and Seattle Railway Company, Oregon Electric Railway Company, and Oregon Trunk Railway, (hereinafter collectively called the "S.P. & S."), of Sections 1(4), 3(1), and 3(4) of the Interstate Commerce Act, Title 49, U.S. Code. These sections provide as follows:

"Section 1. (4) It shall be the duty of every common carrier subject to this part to provide and furnish transportation upon reasonable request therefor, and to establish reasonable through routes with other such carriers, and just and reasonable rates, fares, charges and classifications applicable thereto; and it shall be the duty of common carriers by railroad subject to this part to establish reasonable through routes with common carriers by water subject to part III, and just and reasonable rates, fares, charges, and classifications applicable thereto. It shall be the duty of every such common carrier establishing through routes to provide reasonable facilities for operating such routes and [fol. 10] to make reasonable rules and regulations with respect to their operation, and providing for reasonable compensation to those entitled thereto; and in case of joint rates, fares, or charges, to establish just, reasonable, and equitable divisions thereof, which shall not unduly prefer or prejudice any of such participating carriers."

"Section 3.(1) It shall be unlawful for any common carrier subject to the provisions of this part to make, give, or cause any undue or unreasonable prefer-

ence or advantage to any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic, in any respect whatsoever; or to subject any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever: *Provided, however*, That this paragraph shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier of whatever description."

"Section 3.(4) All carriers subject to the provisions of this part shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines, and for the receiving, forwarding, and delivering of passengers or property to and from connecting lines; and shall not discriminate in their rates, fares, and charges between connecting lines, or unduly prejudice any connecting line in the distribution of traffic that is not specifically routed by the shipper. As used in this paragraph the term 'connecting line' means the connecting line of any carrier subject to the provisions of this part or any common carrier by water subject to part III."

[fol. 11]

V.

In its aforesaid complaint, the Milwaukee set forth that the Spokane, Portland and Seattle Railway Company is a corporation duly organized and existing under the laws of the State of Washington, and owns all of the capital stock of the Oregon Electric Railway Company, a corporation duly organized and existing under the laws of the State of Oregon, and all of the capital stock, except qualifying shares, of Oregon Trunk Railway, a corporation duly organized and existing under the laws of the State of Washington; and that said railroads are common carriers en-

gaged in the transportation of persons and property in interstate and foreign commerce.

VI.

The complaint to the Interstate Commerce Commission further alleges that complete physical track connections and interchange facilities for the interchange of freight traffic between the Milwaukee and the S.P.& S. have long been installed and in actual use at Spokane, Washington, and joint through rates and agreed divisions of said rates have long been in effect between the Milwaukee and S.P.& S. via said interchange point and freight traffic moving thereunder has long been interchanged thereat, but only to the limited extent therein described. Contrariwise, through routes and joint rates now exist, and have for many years existed, for the interchange at Spokane, Washington between the S.P.& S. and the Great Northern Railway Company and Northern Pacific Railway Company and their connections, without limitation or restriction as to length of haul over the lines of said Great Northern and Northern Pacific, of all freight traffic of whatsoever nature moving [fol. 12] between points on the S.P.& S., on the one hand, and all other parts of the United States east of Spokane, and Canada and Mexico, on the other.

VII.

The complaint to the Interstate Commerce Commission further alleges that plaintiff had requested the S.P.& S. to enter into arrangements for the establishment of joint rates and divisions on all traffic via Spokane, as an interchange point to the same extent as granted by the S.P.& S. to said Great Northern and Northern Pacific, but the S.P.& S. refused, and still refuses, so to do; that by reason of the limited application of such joint through rates as now exist between the Milwaukee and the S.P.& S. and by reason of the refusal of the S.P.& S. to enter into joint through rates similar to those presently enjoyed by said Great Northern and Northern Pacific, as above described, the Milwaukee is restricted in its participation in freight traffic either originating at or destined to points on the

lines of the S.P.& S. (except to the limited extent described in said complaint) to the handling of said traffic between junctions of the Milwaukee with said Great Northern or Northern Pacific and their connections at points on or east of the Missouri River, and also at points in the State of Montana, (such junction points being hereinafter referred to as "Eastern gateways"), and at points east and south thereof, thereby depriving the Milwaukee of the haul over its lines between Spokane and said Eastern gateways, a distance of 1,460 miles in the case of Minnesota Transfer, Minnesota, which is a representative Eastern gateway. That the only rates now available via the Milwaukee and its connections via said Spokane interchange on traffic between points on said S.P.& S. lines and points on the [fol. 13] lines of the Milwaukee and its connections (other than those described in said complaint) are combination rates comprised of local factors between Spokane and points on the lines of said S.P.& S. and between Spokane and points on the lines of the Milwaukee and its connections respectively, which combination rates are invariably substantially higher than the joint through rates now effective via said Great Northern and Northern Pacific in connection with said S.P.& S., and which said combination rates are unjust and unreasonable in violation of Section 1 of the Interstate Commerce Act, and will not attract freight traffic on a competitive basis with said through rates. In order to participate in westbound traffic which originates on the lines of the Milwaukee and its connections and destined to points on the lines of the S.P.& S., the Milwaukee is obliged to yield such traffic to the Great Northern or Northern Pacific or their connections at said Eastern gateways, thereby depriving the Milwaukee of a substantial portion of the line-haul to which it is normally entitled. That, except as hereinabove otherwise noted, on traffic originating on the lines of the S.P.& S. and destined to points generally east of Spokane, by reason of the restriction of joint through rates via Spokane to said Great Northern and Northern Pacific, the Milwaukee cannot share in such traffic from Spokane, but is restricted to a haul from the Eastern gateway to destination or point of interchange

with its connections, thereby depriving the Milwaukee of that portion of the haul from Spokane to the Eastern gateway.

That by reason of said refusal of said S.P.& S. to establish such joint through rates via Spokane, the Milwaukee is unable to compete with said Great Northern and Northern Pacific for traffic between points on the [fol. 14] lines of the S.P.& S. and points on the Milwaukee's lines in the State of Montana or west of the Missouri River which are common points with said Great Northern and Northern Pacific, or either of them.

That by reason of such refusal the Milwaukee is further at a disadvantage, even in cases where joint rates are in effect as described in said complaint, with respect to traffic between points on the lines of the S.P.& S. and points on the Milwaukee's lines, for the reason that because of the restrictive and limited application of the few joint through rates which are in effect via Spokane, it is impossible for shippers or consignees to avail themselves of diversion and transit privileges which otherwise would be available to them.

That by reason of such refusal the Milwaukee is further placed at a disadvantage with respect to traffic originating at or destined to local non-competitive points upon its lines west of the Missouri River, because shippers, in order to obtain the lowest combination of local rates, are obliged to route traffic via the nearest junction of said Great Northern or Northern Pacific, thereby depriving the Milwaukee of a substantial line-haul.

VIII.

The complaint prayed, among other things, that the Interstate Commerce Commission require the establishment, maintenance and application to the transportation of the freight traffic between points on the lines of the S.P.& S. and points on the lines of the Milwaukee and its connections, in lieu of the existing unjust, unreasonable and discriminatory routes and combination rates and charges via Spokane, just, reasonable, non-discriminatory and competitive through routes and joint through rates

[fol. 15] and charges via Spokane where such routes and rates do not already exist via the Milwaukee's line, together with all terminal services and privileges, transit privileges, including diversion and reconsignment, allowances and all other rights and privileges available to shippers and receivers of freight via lines of the Great Northern and Northern Pacific.

IX.

Hearings were conducted by the Commission during the period June 24, 1954 to June 23, 1955, at which the following interests intervened on behalf of the Milwaukee:

Secretary of Agriculture of the United States
Western Forest Industries Association
National Livestock Producers Association
Chicago Producers Commission Association
American National Cattlemen's Association
National Wool Growers Association
Traffic Bureau of Sioux Falls, South Dakota.

In addition to various officials of the Milwaukee, many witnesses, who themselves were shippers or represented shippers, testified in support of the Milwaukee.

X.

On July 27, 1956 a detailed report by the examiner of the Commission who conducted all of the hearings was served on the parties. The report proposed that the Interstate Commerce Commission should find:

(1) "That it is necessary and desirable in the public interest, in order to provide adequate and more economic transportation, that through routes and joint rates over such routes the same as apply over routes [fol. 16] composed of the S.P.& S., and each of the northern lines[1] and their connections be established via Spokane, in connection with the Milwaukee and

[1] The term "northern lines" refers to the Great Northern Railway Company and Northern Pacific Railway Company.

its connections, on lumber and forest products, fresh fruits and vegetables, and livestock, in carloads, from points on the S.P.& S. to destinations in the United States east of Spokane, and to destinations on the S.P. & S. from points east of Spokane on coal, furniture, agricultural implements, grain, iron and steel grain bins, and hogs, in carloads, and on coal, in carloads, from Roundup, Mont."

(2) "That the rates assailed on the above-mentioned commodities from and to points in the areas described in the foregoing finding are and for the future will be unjust and unreasonable, and unduly prejudicial of shippers and receivers using, or desiring to use, the Milwaukee routes and unduly preferential of shippers and receivers using the routes composed of the S.P.& S., and the northern lines, in and to the extent that they exceed or may exceed the joint rates maintained on such commodities from and to the same points over the routes of the S.P.& S. and the northern lines, and on coal from Roundup to points on the S.P.& S. to the extent that they exceed the joint rates thereon to the same points from Red Lodge, Mont."

XI.

The Interstate Commerce Commission, however, rejected the proposed report and conclusions of the examiner (300 I.C.C. 453) and found instead:

"That the failure and refusal of the S.P.& S. to join in the establishment of through routes and joint rates via Spokane in connection with the Milwaukee and its connections, the same as apply via Spokane in connection with the northern lines and their connections, [fol. 17] does not result in discrimination against the Milwaukee, nor in undue preference or prejudice between shippers or localities.

"That it is not shown to be necessary or desirable, in the public interest, in order to provide adequate and more efficient or more economical transportation, to require the establishment of through routes and

joint rates in connection with the S.P.& S. system and the Milwaukee and its connections via Spokane the same as apply in connection with the S.P.& S. system and the northern lines and their connections via Spokane."

The Commission further found that with a few exceptions there are no through routes as that term is used in the Interstate Commerce Act between the areas comprised in the amended complaint in connection with the S.P.& S. and the Milwaukee via Spokane; and that the S.P.& S. is operated under a common management and control with, and that its traffic policy is controlled by, the Great Northern and the Northern Pacific, and therefore must be considered as a part of the latter carrier systems.

Three members of the Interstate Commerce Commission, being necessarily absent, did not participate in the disposition of the proceeding. Petition for reargument and reconsideration was filed by the Milwaukee, in which the Secretary of Agriculture, National Livestock Producers Association, Chicago Producers Commission Association, American National Cattlemen's Association, and National Wool Growers Association concurred, which petition, by order of the Commission dated October 24, 1957, was denied.

[fol. 18] XII.

The Milwaukee alleges that the order of the Commission of May 10, 1957 and the report upon which it is based are unlawful, arbitrary, capricious, and contrary to the evidence and the statutes in that the Commission found:

1. That through routes do not exist on all commodities moving between points on the S.P.& S. and points on the Milwaukee and its connections when interchanged between the S.P.& S. and the Milwaukee at Spokane, Washington.

2. That the S.P.& S. is operated under a common management and control with, and that its traffic policy

is controlled by, the Great Northern and the Northern Pacific and therefore must be considered as a part of the latter carrier systems.

3. That the failure and refusal of the S.P.& S. to join in the establishment of through routes and joint rates via Spokane in connection with the Milwaukee and its connections, the same as apply via Spokane in connection with the Great Northern and Northern Pacific and their connections, do not result in discrimination against the Milwaukee, or in undue preference or prejudice between shippers or localities.

4. That it is not shown to be necessary or desirable in the public interest, in order to provide adequate and more efficient, or more economical transportation, to require the establishment of through routes and joint rates in connection with the S.P.& S. system and the Milwaukee and its connections via Spokane the same as apply in connection with the S.P.& S. system and the Great Northern and Northern Pacific and their connections via Spokane.

[fol. 19]

XIII.

The Milwaukee further alleges that said report and order of the Commission are unlawful, arbitrary, and capricious and contrary to the evidence and the statutes in that the Commission:

1. Failed and refused to give serious or any real consideration to the findings and conclusions of the examiner, who heard all of the testimony and saw all of the witnesses, and in that respect acted contrary to the spirit, if not the letter, of the Administrative Procedure Act. (5 U.S.C. Section 1001 et seq., Section 1009 (e); *United Camera Corporation* v. *National Labor Relations Board*, 340 U.S. 474, 196).

2. Failed and refused to find that the present combinations of rates applicable on traffic interchanged at Spokane between the S.P.& S. and the Milwaukee are unjust and unreasonable in violation of Section 1(4) of the Interstate Commerce Act.

XIV.

The Milwaukee is without an adequate remedy at law and respectfully prays:

1. That process may issue against all the defendants.

2. That upon the filing of this complaint the presiding judge of this Court shall call to his assistance in the hearing and determination thereof two other judges, of whom at least one shall be a circuit judge, and the Court thus constituted and convened shall hear this complaint upon due and legal notice to the defendants. 28 U.S.C.A. Sections 2284 and 2321-2325.

[fol. 20] 3. That the Court, upon final hearing of this cause of action, enter a decree which shall adjudge that the report and order of the Interstate Commerce Commission of May 10, 1957, in the respects hereinbefore described are unlawful, null and void, and that in these respects they be set aside and their enforcement forever enjoined.

4. That the Court remand the case to the Interstate Commerce Commission for further proceedings not inconsistent with its order herein.

5. That the plaintiff have recovery of the defendants' proper costs of this cause of action; and

6. That plaintiff have such other and further relief in the premises as this Court may deem fit, appropriate and proper.

Respectfully submitted,

E. R. Eckersall, E. O. Schiewe, R. K. Merrill, 888 Union Station, Chicago 6, Illinois.

B. E. Lutterman, 609 White Building, Seattle, Washington.

R. S. Trump, 225 East Mason Street, Milwaukee, Wisconsin.

[fol. 23]

EXHIBIT "A" TO COMPLAINT

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 31466

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, Complainant,

vs.

SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY, OREGON ELECTRIC RAILWAY COMPANY AND OREGON TRUNK RAILWAY, ET AL., Defendants.

AMENDED COMPLAINT

The amended complaint of the above named complainant respectfully shows:

1. That complainant is a corporation duly organized and existing under the laws of the state of Wisconsin and is a common carrier by railroad in the transportation of persons and property in interstate and foreign commerce, and as such is subject to the provisions of the Interstate Commerce Act.

2. Complainant owns and operates approximately 10,600 miles of railroad in the states of Washington, Idaho, Montana, North Dakota, South Dakota, Minnesota, Wisconsin, Michigan, Iowa, Illinois, Indiana, Missouri and Nebraska. [fol. 24] Among its eastern terminals are Chicago, Illinois; Milwaukee, Wisconsin; Omaha, Nebraska; Kansas City, Missouri; and Minneapolis, St. Paul and Minnesota Transfer, Minnesota, at which points a large volume of freight traffic (which term as hereinafter used includes both carload and less-than-carload traffic) is interchanged with other railroads subject to the provisions of the Interstate Commerce Act, serving, either directly or through their

connections, all parts of the United States, Mexico and the Dominion of Canada.

Among complainant's western terminals are Seattle and Tacoma, Washington, where a large volume of freight traffic is interchanged with other railroads and water carriers engaged in both interstate and foreign commerce; and Spokane, Washington, where complainant interchanges freight traffic with the defendant, Spokane, Portland and Seattle Railway Company, but only to the extent hereinafter set forth. Complainant also originates and terminates a great volume of freight traffic at points upon its line, which traffic is destined to or originates in all parts of the United States and in Canada and Mexico.

3. That the defendant, Spokane, Portland and Seattle Railway Company (hereinafter called "SP&S") is a corporation duly organized and existing under the laws of the state of Washington, and owns all of the capital stock of the defendant, Oregon Electric Railway Company (hereinafter called "Oregon Electric"), a corporation duly organized and existing under the laws of the state of Oregon, and all of the capital stock, except qualifying shares, of [fol. 25] Oregon Trunk Railway (hereinafter called "Oregon Trunk"), a corporation duly organized and existing under the laws of the state of Washington.

Said defendants are common carriers by railroad engaged in the transportation of persons and property in interstate and foreign commerce, the lines of said defendants being known as the Spokane, Portland and Seattle Railway System. The lines of said defendants lie entirely within the states of Oregon and Washington, the eastern terminus of said system being Spokane, Washington, located on the line of the SP&S. The lines of the Oregon Electric connect with the SP&S at Portland, Linnton and Willbridge, Oregon. The line of the Oregon Trunk connects with the SP&S at Wishram, Washington. The territory served by defendants lies southwest of Spokane, Washington, and is not served directly by complainant. The defendants, SP&S, Oregon Electric and Oregon Trunk, will hereinafter occasionally be referred to as "the SP&S System".

4. The other defendants named in Appendix A hereto attached and made a part hereof are common carriers engaged in the transportation of property and persons in interstate and foreign commerce, wholly by railroad, or partly by railroad and partly by water, between places in the United States, and between places in the United States on the one hand and places in the Dominion of Canada and the Republic of Mexico on the other, and as such common carriers are subject to the provisions of the Interstate Commerce Act.

[fol. 26] Said other defendants named in said Appendix A are connecting lines which make up various through routes in which complainant participates between various points in the United States, including the District of Columbia, and between such points and points in the Dominion of Canada and the Republic of Mexico. Said other defendants will hereinafter occasionally be referred to as "connections".

5. Complete physical track connections and interchange facilities for the interchange of freight traffic between complainant and the SP&S have long been installed and in actual use at Spokane, Washington, and through routes and joint through rates and agreed divisions of said rates have long been in effect between complainant and defendants via said interchange point, and freight traffic moving thereunder has long been interchanged between complainant and the SP&S at said interchange point, but only to the limited extent hereinafter in this paragraph described. The freight traffic which has been, is or may be so interchanged with the SP&S at Spokane, Washington under such joint rates and agreed divisions is as follows:

(a) Lumber, shingles and other forest products from stations on the SP&S System, except stations on the Oregon Electric Santiam and Foster, Oregon, branch lines, Index Nos. 600 to 660, inclusive, of Agent A. P. Leland's I.C.C. No. A-34 (formerly A-33), to stations on the lines of complainant in North and South Dakota east of Mobridge, Minnesota, Iowa, Wisconsin, Illinois, Michigan, and [fol. 27] Missouri, as named in TCFB Tariff Nos.

18-P and 28-O, Agent W. J. Prueter's I.C.C. Nos. 1474 and 1545, respectively, also to Mobridge, South Dakota, as named in NPCFB Tariff No. 58-D, Agent W. R. Watson's I.C.C. No. 864. These destination stations, however, do not include Chicago, Illinois, Duluth, Minnesota, LaCrosse, Prairie du Chien and Superior, Wisconsin, certain stations in North Dakota, stations on the complainant's Terre Haute Division, nor stations on several other branch lines in Minnesota, Iowa, Wisconsin and Illinois. The points on complainant's said railroad to which such joint through rates apply may be determined in detail by examination of the above named tariffs.

(b) Lumber and other forest products from Vernonia, Oregon on the SP&S to stations on complainant's lines in Montana, North and South Dakota, Mobridge and west, and on White Sulphur Springs & Yellowstone Park Railway Co., all as named in NPCFB Tariff No. 58-D, Agent W. R. Watson's I.C.C. No. 864.

(c) Class rates between Portland and East Portland, Oregon, and Vancouver, Washington, on the one hand, and stations on complainant's Metaline Falls Branch Line, Index Nos. 12650 to 12698, inclusive, of Agent A. P. Leland's I.C.C. No. A-34 (formerly A-33), as named in NPCFB Tariff No. 65-G, Agent W. R. Watsons I.C.C. No. 857.

[fol. 28] (d) Petroleum and petroleum products from East Pasco, Washington to stations on complainant's lines in Washington and Idaho, as named in NPCFB Tariff No. 14-Q, Agent W. R. Watson's I.C.C. No. 859.

(e) Petroleum and petroleum products from Great Falls, Montana to SP&S stations Hooper to Goldendale, Washington, inclusive, and specific commodity rates on petroleum crude oil from Baker,

Montana to Willbridge, Oregon, all as named in CMStP&P RR Tariff GFD No. 17855-C, I.C.C. No. B-7728.

(f) Livestock between stations on complainant's lines in Washington (east of Warden), Idaho and Montana, on the one hand, and stations on defendants' lines, on the other, as named in NPCFB Tariff No. 69-B, Agent W. R. Watson's I.C.C. No. 829.

(g) Plaster and related articles from Hanover and Heath, Montana, to Oregon Electric stations, Hillsboro to Eugene, Oregon, inclusive, as named in CMStP&P RR GFD No. 12850-I I.C.C. No. B-7194.

(h) Portland cement from Metaline Falls, Washington to stations on the Oregon Trunk, and to stations on the SP&S west of Spokane, Washington, to and including Portland, Oregon, all as named in NPCFB Tariff No. 21-I, Agent W. R. Watson's I.C.C. No. 825.

[fol. 29] (i) On export and import traffic arriving at or departing from the Portland, Oregon terminals, Astoria, Oregon, and Vancouver, Washington, and destined to or originating on the lines of complainant and its connections in the state of Montana and east thereof as named in TCFB Tariffs Nos. 29-J and 30-H, Agent W. J. Prueter's I.C.C. Nos. 1553 and 1554, respectively.

(j) Miscellaneous commodities between Portland and East Portland, Oregon, on the one hand, and stations on complainant's Metaline Falls Line, Index Nos. 12651 to 12698, inclusive, of Agent A. P. Leland's I.C.C. No. A-34 (formerly A-33); pipe, sewer, and related articles from Dishman, Washington on complainant's line to Bend, Oregon on Oregon Trunk; plaster, aggregate (Perlite) from Dant, Oregon on Oregon Trunk to Metaline Falls, Washington on complainant's line; and wallboard from St. Helens, Oregon on SP&S to Dishman,

Washington on complainant's line, all as named in NPCFB Tariff No. 2-L, Agent W. R. Watson's I.C.C. No. 862.

6. That through routes and joint through rates now exist and have for many years existed for the interchange of traffic at Spokane, Washington between defendants SP&S System and certain other railroads subject to the provisions of the Interstate Commerce Act, to-wit, Great Northern Railway Company (hereinafter called "Great Northern"), Northern Pacific Railway Company (hereinafter called "Northern Pacific"), and their connections; [fol. 30] covering, both eastbound and westbound, and without limitation or restriction as to length of haul over the lines of said Great Northern and Northern Pacific, all freight traffic of whatsoever nature moving between points on said defendants' lines, on the one hand, and all other parts of the United States generally east of Spokane, and Canada and Mexico, on the other. Appendix B hereto attached and made a part hereof sets forth the tariffs and territorial application of the joint through rates in this paragraph described, together with the commodities to which such rates are applicable. The tariffs thus shown are representative and not necessarily all-inclusive.

7. That complainant has requested defendants SP&S System to enter into arrangements for the establishment of joint through rates and divisions on all traffic as above described in paragraph 6 hereof via Spokane, Washington as an interchange point to the same extent as granted by said defendants to said Great Northern and Northern Pacific, but defendants have refused and still refuse so to do.

8. That by reason of the limited application of such joint through rates as now exist between complainant and defendants and by reason of the refusal of defendants SP&S System to enter into joint through rates similar to those presently enjoyed by said Great Northern and Northern Pacific, as above described, complainant is restricted in its participation in freight traffic either originating at or destined to points on the lines of defendants

SP&S System (except to the limited extent described in paragraph 5 hereof) to the handling of said traffic be-
[fol. 31] tween junctions of complainant with said Great Northern or Northern Pacific and their connections at points on or east of the Missouri River, and also at points in the state of Montana, (such junction points being hereinafter referred to as "Eastern gateways"), and points east and south thereof, thereby depriving complainant of the haul over its lines between Spokane and said Eastern gateways, a distance of 1,460 miles in the case of Minnesota Transfer, Minnesota, which is a representative Eastern gateway. That the only rates now available via complainant and its connections via said Spokane int rchange on traffic between points on said defendants' lines and points on the lines of complainant and its connections (other than those described in paragraph 5 hereof) are combination rates comprised of local factors between Spokane and points on the lines of said defendants and between Spokane and points on the lines of complainant and its connections respectively, which combination rates are invariably substantially higher than the joint through rates now effective via said Great Northern and Northern Pacific in connection with said defendants, and which said combination rates are unjust and unreasonable in violation of Section 1 of the Interstate Commerce Act, and will not attract freight traffic on a competitive basis with said through rates. In order to participate in westbound traffic which originates on the lines of complainant and its connections and destined to points on the lines of defendants SP&S System, complainant is obliged to yield such traffic to the Great Northern or Northern Pacific or their connections at said Eastern gateways, thereby depriving com-
[fol. 32] plainant of a substantial portion of the line haul to which it is normally entitled. That, except as hereinabove otherwise noted, on traffic originating on the lines of defendants SP&S System and destined to points generally east of Spokane, Washington, by reason of the restriction of joint through rates via Spokane to said Great Northern and Northern Pacific, complainant cannot share in such traffic from Spokane, Washington, but is restricted to a haul from the Eastern gateway to destination or point

of interchange with its connections, thereby depriving complainant of that portion of the haul from Spokane to the Eastern gateway.

That by reason of said refusal of said defendants, SP&S System to establish such joint through rates via Spokane, complainant is unable to compete with said Great Northern and Northern Pacific for traffic between points on the lines of the SP&S System and points on complainant's lines in the state of Montana or west of the Missouri River which are common points with said Great Northern and Northern Pacific, or either of them.

That by reason of such refusal complainant is further at a disadvantage, even in cases where joint rates are in effect as described in paragraph 5 hereof, with respect to traffic between points on the lines of the SP&S System and points on complainant's lines, for the reason that because of the restrictive and limited application of the few joint through rates which are in effect via Spokane it is impossible for shippers or consignees to avail themselves of diversion and transit privileges which otherwise would be available to them.

[fol. 33] That by reason of such refusal complainant is further placed at a disadvantage with respect to traffic originating at or destined to local non-competitive points upon its lines west of the Missouri River, because shippers, in order to obtain the lowest combination of local rates, are obliged to route traffic via the nearest junction of said Great Northern or Northern Pacific, thereby depriving complainant of a substantial line-haul.

9. That, the extreme easterly terminus of defendants SP&S System being Spokane on the SP&S, the establishment of a full line of joint rates via Spokane would not deprive said defendants or any of them of any portion of their line-haul.

10. That complainant's line between Spokane, Washington and said Eastern gateways is direct and without circuity, the distance via complainant's line, for example, between Spokane and Minnesota Transfer being 1,460 miles, via the Great Northern 1,429 miles, and via the Northern Pacific 1,486 miles, and that the opening of an

additional through route for all traffic via complainant's line would provide adequate and more efficient and more economic transportation.

11. That the Commission should prescribe just, reasonable, non-discriminatory and competitive through routes and joint through rates applicable to the transportation of freight traffic via Spokane, Washington over the lines of defendants SP&S System and of complainant and its connections, together with all terminal services and privileges, transit privileges, including diversion and recon- [fol. 34] signment, allowances and all other rights and privileges available to shippers and receivers of freight, where such routes and rates do not already exist via complainant's line, to the same extent as now are and hereafter may be in effect via Spokane over the lines of defendants SP&S System and said Great Northern and Northern Pacific and their connections.

When and if such routes and rates are established and prescribed by the Commission, the proceeding should be held open so that the complainant and defendants will be given an opportunity voluntarily to establish just, reasonable, equitable, non-preferential and non-prejudicial divisions, failing in which the proceeding should be assigned for further hearing so that the Commission may determine and prescribe just, reasonable, equitable, non-preferential and non-prejudicial divisions as between complainant and the defendants. It is not complainant's intention, and complainant does not request, that any order be entered in this proceeding prescribing divisions for complainant's connections lower or on different bases than those then currently accruing to said connections on any traffic of similar nature and length of haul via any presently existing route or routes to or from points on the SP&S System.

12. Complainant does not seek in this proceeding exclusive joint through rates or through routes restricted to its line between said Eastern gateways and points east thereof on any traffic originating or terminating on lines of defendants SP&S System and interchanged between complainant and said defendants at Spokane, Washing-

[fol. 35] ton, but, on the contrary, it is complainant's purpose and desire that the routing of such traffic east of said Eastern gateways remain free and open to all carriers serving said gateways to the same extent as now enjoyed by such carriers.

13. That by reason of the facts stated in the foregoing paragraphs, the failure and refusal of the defendants to establish competitive through routes and joint through rates and charges applicable to the freight traffic and between the points hereinabove described constitutes violations by defendants of Section 1(4) and Sections 3(1) and 3(4) of the Interstate Commerce Act, and deprives the public and complainant of the use of available and reasonable through routes and reasonable non-discriminatory through rates which are necessary and desirable in the public interest.

WHEREFORE, complainant prays that defendants be severally required to answer the charges herein; that after due hearing and investigation an order be made commanding said defendants and each of them to cease and desist from the aforesaid violations of the Interstate Commerce Act, and to require said defendants to establish, put in force, maintain and apply in the future to the transportation of the freight traffic hereinbefore described, between points on the lines of defendants SP&S, Oregon Electric and Oregon Trunk and points on the lines of complainant and its connections, in lieu of the existing unjust, unreasonable and discriminatory routes and combination rates and charges via Spokane, Washington, just, reasonable, non-discriminatory and competitive through routes [fol. 36] and joint through rates and charges via Spokane, where such routes and rates do not already exist via complainant's line, with respect to the traffic and between the places and territories hereinbefore described, together with all terminal services and privileges, transit privileges, including diversion and reconsignment, allowances and all other rights and privileges now or hereafter available to shippers and receivers of freight via the other routes described in paragraph 6 hereof; that the Commission, by order, determine and prescribe just, reasonable, equitable,

non-preferential and non-prejudicial divisions of the said joint rates and charges herein sought, in the event the defendants fail and refuse voluntarily to establish such divisions; and that such further order or orders be made as the Commission may consider proper and necessary in the premises.

Dated at Chicago, Illinois, the 27th day of August, 1954.

Respectfully submitted,

CARSON L. TAYLOR,
W. J. QUINN,
THOS. H. MAGUIRE,
R. K. MERRILL,
888 Union Station,
Chicago 6, Illinois,

B. E. LUTTERMAN,
609 White Building,
Seattle 1, Washington,
Attorneys for Complainant.

[fol. 37]

Appendix A to Exhibit "A"

List of Defendants.

— A —

Aberdeen and Rockfish Railroad Company
Abilene & Southern Railway Company
Ahnapee and Western Railway Company, The
Akron, Canton & Youngstown Railroad Company, The
Alabama Great Southern Railroad Company, The
Alabama, Tennessee and Northern Railroad Company
Albany and Northern Railway Company
Alexander Railroad Company
Algoma Central and Hudson Bay Railway Company, The
Alma & Jonquieres Railway Company, The
Alton and Southern Railroad
Angelina & Neches River Railroad Company
Ann Arbor Railroad Company, The
Apalachicola Northern Railroad Company
Arcade and Attica Railroad Corporation
Arkansas & Louisiana Missouri Railway Company
Arkansas & Ozarks Railway Corporation
Arkansas Railroad Company
Arkansas Western Railway Company, The
Aroostook Valley Railroad Company
Asherton and Gulf Railway Company (Guy A. Thompson, Trustee)
Ashley, Drew & Northern Railway Company
Asphalt Belt Railway Company (Guy A. Thompson, Trustee)
Atchison, Topeka and Santa Fe Railway Company, The
Atlanta & Saint Andrews Bay Railway Company
Atlanta and West Point Rail Road Company
Atlantic and Danville Railway Company, The
Atlantic and East Carolina Railway Company
Atlantic and Western Railway Company
Atlantic Coast Line Railroad Company
Augusta Railroad Company

[fol. 38]

— B —

Baltimore and Eastern Railroad Company
Baltimore and Ohio Chicago Terminal Railroad Company, The
Baltimore and Ohio Railroad Company, The
Baltimore Steam Packet Company
Bangor and Aroostook Railroad Company
Barre and Chelsea Railroad Company
Bath and Hammondsport Railroad Company
Bauxite & Northern Railway Company
Beaufort and Morehead Railroad Company (A. T. Leary, Lessee)
Beaumont, Sour Lake & Western Railway Company, The (Guy A. Thompson, Trustee)
Beaver, Meade and Englewood Railroad Company
Belfast and Moosehead Lake Railroad Company
Bellefonte Central Railroad Company
Belt Railway Company of Chicago, The
Bessemer and Lake Erie Railroad Company
Bevier & Southern Railroad Company
Birmingham & Southeastern Railroad Company
Birmingham Belt Railroad Company
Birmingham Southern Railroad Company
Bonhomie and Hattiesburg Southern Railroad Company
Boston and Maine Railroad
Bowdon Railroad and Transportation Company
Boyne City Railroad Company
Brooklyn Eastern District Terminal
Bush Terminal Railroad Company
Butte, Anaconda & Pacific Railway Company

— C —

Canada Steamship Lines, Limited
Canadian National Railway Company
Canadian National Railways
Canadian Pacific Railway Company
Canton & Carthage Railroad Company
Cape Fear Railways, Incorporated
Carolina and Northwestern Railway Company
Carolina, Clinchfield and Ohio Railway

[fol: 39]

Carolina, Clinchfield and Ohio Railway of South Carolina, Lessees:
Atlantic Coast Line Railroad Company
Louisville and Nashville Railroad Company
Carolina Southern Railway Company, The
Carrollton Railroad, The
Carthage Transportation Company, Inc.
Cassville & Exeter Railway Company
Cedar Rapids and Iowa City Railway Company
Central Indiana Railway Company
Central of Georgia Railway Company
Central Railroad Company of New Jersey, The
Central Vermont Railway, Inc.
Champlain and St. Lawrence Railroad Company, The (Canadian National Railway Company, Lessee)
Charles City Western Railway Company
Charleston & Western Carolina Railway Company
Chattahoochee Valley Railway Company
Chattanooga Traction Company
Chesapeake and Ohio Railway Company, The
Chesapeake Western Railway
Chestnut Ridge Railway Company
Chicago & Eastern Illinois Railroad Company
Chicago & Illinois Midland Railway Company
Chicago & Illinois Western Railroad
Chicago and North Western Railway Company
Chicago, Aurora and Elgin Railway Company
Chicago, Burlington & Quincy Railroad Company
Chicago Great Western Railway Company
Chicago, Indianapolis and Louisville Railway Company
Chicago Junction Railway (The Chicago River and Indiana Railroad Company, Lessee)
Chicago North Shore and Milwaukee Railway
Chicago Produce Terminal Company
Chicago River and Indiana Railroad Company, The
Chicago, Rock Island and Pacific Railroad Company
Chicago, Saint Paul, Minneapolis and Omaha Railway Company
Chicago South Shore and South Bend Railroad
Chicago, West Pullman & Southern Railroad Company

[fol. 40]

Cincinnati, New Orleans and Texas Pacific Railway Company, The
Clarendon and Pittsford Railroad Company, The
Cliffside Railroad Company
Columbia & Milistadt Railroad Company
Columbia, Newberry and Laurens Railroad Company
Columbus and Greenville Railway Company
Copper Range Railroad Company
Cornwall Railroad Company
Cotton Plant-Fargo Railway Company
Coudersport and Port Allegany Railroad Company

— D —

Dansville and Mount Morris Railroad Company, The
Dardanelle & Russellville Railroad Company
Delaware and Hudson Railroad Corporation, The
Delaware, Lackawanna and Western Railroad Company, The
Delta Valley & Southern Railway Company
Denison and Pacific Suburban Railway Company, The
De Queen and Eastern Railroad Company
Des Moines & Central Iowa Railway Company
Detroit and Mackinac Railway Company
Detroit and Toledo Shore Line Railroad Company, The
Detroit, Toledo and Ironton Railroad Company
Dominion Atlantic Railway Company, The
Doniphan, Kensett & Searcy Railway
Duluth & Northeastern Railroad Company
Duluth, Missabe and Iron Range Railway Company
Duluth, South Shore and Atlantic Railroad Company, The
Duluth, Winnipeg and Pacific Railway Company
Durham and Southern Railway Company

— E —

East Carolina Railway
East Jordan & Southern Railroad Company
East Tennessee and Western North Carolina Railroad Company
East Washington Railway Company

[vol. 41]

Edgmoor and Marietta Railway
El Dorado and Wesson Railway Company
Elgin, Joliet and Eastern Railway Company
Erie Railroad Company
Escanaba and Lake Superior Railroad Company
Essex Terminal Railway Company, The

— F —

Fernwood, Columbia & Gulf Railroad Company
Florida East Coast Railway Company, (John W. Martin, Trustee)
Fonda, Johnstown and Gloversville Railroad Company
Fordyce and Princeton R.R. Co.
Fore River Railroad Corporation
Fort Dodge, Des Moines & Southern Railway Company
Fort Myers Southern Railroad Company
Fort Smith and Van Buren Railway Company
Fort Smith, Subiaco & Rock Island Railroad Company
Fort Worth and Denver Railway Company
Frankfort & Cincinnati Railroad Company

— G —

Gainesville Midland Railroad Company
Galesburg and Great Eastern Railroad Company
Galveston, Houston and Henderson Railroad Company
Garden City Western Railway Company, The
Genesee and Wyoming Railroad Company
Georgia & Florida Railroad (Alfred W. Jones, Receiver)
Georgia, Ashburn, Sylvester & Camilla Railway Company
Georgia Northern Railway Company, The
Georgia Rail Road & Banking Company, operated as the Georgia Railroad by Lessees: Atlantic Coast Line Railroad Company, Louisville and Nashville Railroad Company
Georgia Southern and Florida Railway Company
Grafton and Upton Railroad Company
Grand River Railway Company, The
Grand Trunk Western Railroad Company
Graysonia, Nashville & Ashdown Railroad Company

[fol. 42]

Green Bay and Western Railroad Company
Greenville and Northern Railway Company
Greenwich & Johnsonville Railway Company
Gulf, Colorado and Santa Fe Railway Company
Gulf, Mobile and Ohio Railroad Company

— H —

Hampton & Branchville Railroad Company
Harriman and Northeastern Railroad Company
Hartford and Slocomb Railroad Company
Hartwell Railway Company
High Point, Thomasville & Denton Railroad Company
Hillsboro and North Eastern Railway Company
Hoboken Manufacturers Railroad Company
Houston and Brazos Valley Railway Company (Guy A. Thompson, Trustee)
Houston Belt & Terminal Railway Company

— I —

Illinois Central Railroad Company
Illinois Northern Railway
Illinois Terminal Railroad Company
Indiana Harbor Belt Railroad Company
International-Great Northern Railroad Company (Guy A. Thompson, Trustee)
Interstate Railroad Company
Ironton Railroad Company, The (Lehigh Valley Railroad Company and Reading Company, Lessees)

— J —

Jay Street Connecting Railroad, The

— K —

Kansas City, Kaw Valley Railroad, Inc.
Kansas City Southern Railway Company, The
Kansas, Oklahoma & Gulf Railway Company
Kentucky & Tennessee Railway
Kewaunee, Green Bay and Western Railroad Company

[fol. 43]

— L —

Lackawanna and Wyoming Valley Railroad Company (E. McLain Watters, Trustee)
Lake Erie and Northern Railway Company, The
Lake Erie, Franklin & Clarion Railroad Company
Lakeland Railway
Lakeside and Marblehead Railroad Company, The
Lake Superior & Ishpeming Railroad Company
Lancaster and Chester Railway Company
Laona & Northern Railway Company
La Salle and Bureau County Railroad Company, The
Laurinburg and Southern Railroad Company
Lehigh and Hudson River Railway Company, The
Lehigh and New England Railroad Company
Lehigh Valley Railroad Company
Litchfield and Madison Railway Company
Live Oak, Perry & Gulf Railroad Company
London and Port Stanley Railway, The
Long Island Rail Road Company, The (Wm. Wyer, Trustee)
Lorain & West Virginia Railway Company, The
Louisiana & Arkansas Railway Company
Louisiana and North West Railroad Company, The
Louisiana & Pine Bluff Railway Company, The
Louisiana Midland Railway Company
Louisiana Southern Railway Company
Louisville & Jeffersonville Bridge and Railroad Company
Louisville and Nashville Railroad Company
Louisville and Wadley Railroad Company
Louisville, New Albany & Corydon Railroad Company

— M —

Macon, Dublin & Savannah Railroad Company
Maine Central Railroad Company
Manistee and Northeastern Railway Company
Manistee & Repton Railroad Company, Inc.
Manistique and Lake Superior Railroad Company
Mansfield Railway & Transportation Company, The

[fol. 44]

Manufacturers Railway Company
Marcellus and Otisco Company, Inc., The
Marinette, Tomahawk & Western Railroad Company
Maryland and Pennsylvania Railroad Company
Mason City and Clear Lake Railroad Company (An Iowa Corporation)
Meridian & Bigbee Railroad Company
Middletown and New Jersey Railway Company, Inc.
Midland Continental Railroad
Midland Valley Railroad Company
Millstead Railroad Company
Milwaukee Electric Railway & Transport Company, The
Minneapolis & St. Louis Railway Company, The
Minneapolis, Anoka and Cuyuna Range Railroad Company
Minneapolis, Northfield and Southern Railway
Minneapolis, St. Paul & Sault Ste. Marie Railroad Company
Minnesota, Dakota & Western Railway Company
Minnesota Western Railway Company
Mississippi & Skuna Valley Railroad Company
Mississippian Railway
Mississippi Central Railroad Company
Mississippi Export Railroad Company
Missouri and Illinois Bridge and Belt Railroad Company
Missouri-Illinois Railroad Company
Missouri-Kansas-Texas Railroad Company
Missouri-Kansas-Texas Railroad Company of Texas
Missouri Pacific Railroad Company (Guy A. Thompson, Trustee)
Missouri Pacific Railroad Corporation in Nebraska (Guy A. Thompson, Trustee)
Monongahela Railway Company, The
Montour Railroad Company
Morristown & Erie Railroad Company
Moscow, Camden & San Augustine Railroad
Moshassuck Valley Railroad Company

[fol. 45]

Nacogdoches & Southeastern Railroad Company, The
Napierville Junction Railway Company
Narragansett Pier Railroad Company, Inc., The
Nashville, Chattanooga & St. Louis Railway, The
Natchez & Southern Railway Company (Guy A. Thompson, Trustee)
Natchez, Urania and Ruston Railway Company, The
Nelson & Albemarle Railway Company
New Iberia & Northern Railroad Company (Guy A. Thompson, Trustee)
New Jersey and New York Railroad Company, The (Peter Duryee, Trustee)
New Jersey, Indiana & Illinois Railroad Company
New Orleans and Lower Coast Railroad Company
New Orleans and Northeastern Railroad Company
New Orleans, Texas & Mexico Railway Company (Guy A. Thompson, Trustee)
New York and Long Branch Railroad Company, The
New York Central Railroad Company, The
New York, Chicago and St. Louis Railroad Company, The
New York Connecting Rail Road Company, The
New York Dock Railway
New York, New Haven and Hartford Railroad Company, The
New York, Ontario and Western Railway Company (Ferdinand J. Sieghardt, Trustee)
New York, Susquehanna and Western Railway Company
Norfolk and Western Railway Company
Norfolk Southern Railway Company
Northampton and Bath Railroad Company
Northeast Oklahoma Railroad Company
Northern Navigation Company, Limited
North Louisiana & Gulf Railroad Company

[fol. 46]

—0—

Oklahoma City-Ada-Atoka Railway Company
Okmulgee Northern Railway Company

Ontario Northland Railway
Orange & Northwestern Railroad Company, The (Guy A. Thompson, Trustee)
Oregon Electric Railway Company
Oregon Trunk Railway

— P —

Paducah & Illinois Railroad Company
Pan-Atlantic Steamship Corporation
Panhandle and Santa Fe Railway Company
Paris and Mt. Pleasant Railroad Co.
Passamaquoddy Ferry and Navigation Company
Pearl River Valley Railroad Company
Pecos Valley Southern Railway Company, The
Pennsylvania and Atlantic Railroad Company
Pennsylvania and Atlantic Railroad Company (The Union Transportation Company, Lessee)
Pennsylvania-Ontario Transportation Company, The
Pennsylvania Railroad Company, The
Pennsylvania-Reading Seashore Lines
Peoria and Pekin Union Railway Company
Peoria Terminal Company
Pickens Railroad Company
Piedmont and Northern Railway Company
Pittsburg & Shawmut Railroad Company, The
Pittsburgh and Lake Erie Railroad Company, The
Pittsburgh & West Virginia Railway Company, The
Pittsburgh, Chartiers & Youghiogheny Railway Company
Point Comfort & Northern Railway Company
Port Huron and Detroit Railroad Company
Potomac Edison Company, The
Prescott and Northwestern Railroad Company, The

— Q —

Quanah, Acme & Pacific Railway Company
Quebec Central Railway Company

[fol. 47]

— R —

Rahway Valley Company (Rahway Valley Company, Lessee)
Raritan River Rail Road Company
Reader Railroad
Reading Company
Richmond, Fredericksburg and Potomac Railroad Company
Rio Grande City Railway Company (Guy A. Thompson, Trustee)
Roberval and Saguenay Railway Company, The
Rockdale, Sandow & Southern Railroad Company
Rockingham Railroad Company
Roscoe, Snyder and Pacific Railway Company
Rosslyn Connecting Railroad Company
Rutland Railway Corporation

— S —

St. Johnsbury & Lamoille County Railroad
St. Louis & Troy Railroad Company
St. Louis, Brownsville and Mexico Railway Company, The (Guy A. Thompson, Trustee)
St. Louis-San Francisco Railway Company
St. Louis, San Francisco and Texas Railway Company
St. Louis Southwestern Railway Company
St. Marys Railroad Company
San Antonio Southern Railway Company (Guy A. Thompson, Trustee)
San Antonio, Uvalde & Gulf Railroad Company (Guy A. Thompson, Trustee)
San Benito and Rio Grande Valley Railway Company (Guy A. Thompson, Trustee)
Sandersville Railroad Company
Sand Springs Railway Company
Sanford and Eastern Railroad Corporation
Saratoga & Schuylerville Railroad Corporation
Savannah & Atlanta Railway Company
Seaboard Air Line Railroad Company

Skaneateles Short Line Railroad Corporation
Smoky Mountain Railroad (J. E. Temple, Receiver)
[fol. 48]
South Brooklyn Railway Company
Southern Iowa Railway Company
Southern Railway Company
South Georgia Railway Company, The
Spokane, Portland and Seattle Railway Company
Springfield Terminal Railway Company (Vermont)
Staten Island Rapid Transit Railway Company, The
State University Railroad Company
Stewartstown Railroad Company, The
Sugar Land Railway Company (Guy A. Thompson, Trustee)
Sumter and Choctaw Railway Company

— T —

Talbotton Railroad Company
Tallulah Falls Railway Company (H. L. Brewer, Receiver)
Tampa Southern Railroad Company
Tavares and Gulf Railroad Company
Tennessee, Alabama & Georgia Railway Company
Tennessee Central Railway Company
Terminal Railroad Association of St. Louis
Texas and New Orleans Railroad Company
Texas & Northern Railway Company
Texas and Pacific Railway Company, The
Texas Mexican Railway Company, The
Texas-New Mexico Railway Company
Texas, Oklahoma & Eastern Railroad Company
Texas Short Line Railway Company
Texas South-Eastern Railroad Company
Thousand Islands Railway Company, The
Toledo and Eastern Railroad Company, The
Toledo, Peoria & Western Railroad Company
Toronto, Hamilton and Buffalo Railway Company, The
Tremont & Gulf Railway Company
Tulsa-Sapulpa Union Railway Company
Tuskegee Railroad Company, The

[fol. 49]

— U —

Unadilla Valley Railway Company
Union Freight Railroad Company (Boston, Mass.)
Union Pacific Railroad Company
United States and Canada Rail Road Company, The (Canadian National Railway Company, Lessee)

— V —

Valdosta Southern Railroad
Virginia and Carolina Southern Railroad Company
Virginian Railway Company, The

— W —

Wabash Railroad Company
Waco, Beaumont, Trinity & Sabine Railway Company (T. L. Epperson, Receiver)
Wadley Southern Railway Company
Ware Shoals Railroad Company
Warren & Ouachita Valley Railway Company
Warren & Saline River Railroad Company
Warrenton Rail Road Company
Warwick Railway Company
Washington and Old Dominion Railroad
Waterloo, Cedar Falls & Northern Railroad
Weatherford, Mineral Wells and Northwestern Railway Company, The
Western Allegheny Railroad Company
Western Maryland Railway Company
Western Railway of Alabama, The
Wharton and Northern Railroad Company
White Sulphur Springs & Yellowstone Park Railway Company
Wichita Falls & Southern Railroad Company
~~Winona Railroad Co., The~~
Winston-Salem Southbound Railway Company
Wrightsville and Tennille Railroad Company

— Y —

Youngstown & Southern Railway Company

[fol. 50]

APPENDIX B TO EXHIBIT "A"

TARIFF

ISSUE AND NUMBER	I.C.C. No.	COMMODITY
TCFB 1-C (formerly 1-B)	Agent W. J. Prueter's 1559 (formerly 1551)	General Commodities
TCFB 2-T (formerly 2-S)	Agent W. J. Prueter's 1561 (formerly 1552)	General Commodities
TCFB 33-I	Agent W. J. Prueter's 1539	Wool and Mohair
TCFB 35-I	Agent W. J. Prueter's 1557	Oil Cake, vegetable oils and related articles
TCFB 38-H	Agent W. J. Prueter's 1549	Class Rates
TCFB 44-L	Agent W. J. Prueter's 1558	Fresh Fruits and vegetables

[fol. 51]

TERRITORIAL APPLICATION

To	*From*
Stations on SP&S Ry., OT Ry. and OE Ry.	Eastern Defined Territories as described in TCFB Territorial Directory No. 5, Agent W. J. Prueter's I. C. C. No. 1563 (formerly 1548).

From	*To*
Stations on SP&S Ry., OT Ry. and OE Ry.	Eastern Defined Territories as described in TCFB Territorial Directory No. 5, Agent W. J. Prueter's I. C. C. No. 1563 (formerly 1548).

From	*To*
Stations on SP&S Ry., OT Ry. and OE Ry.	Eastern Defined Territories as described in TCFB Territorial Directory No. 5, Agent W. J. Prueter's I. C. C. No. 1563 (formerly 1548).

Between	*And*
Stations on SP&S Ry., OT Ry. and OE Ry.	Eastern Defined Territories as described in TCFB Territorial Directory No. 5, Agent W. J. Prueter's I. C. C. No. 1563 (formerly 1548).

Between	*And*
Stations on SP&S Ry., OT Ry. and OE Ry.	Eastern Defined Territories as described in TCFB Territorial Directory No. 5, Agent W. J. Prueter's I. C. C. No. 1563 (formerly 1548).

Between	*And*
Stations on SP&S Ry., OT Ry. and OE Ry.	Eastern Defined Territories as described in TCFB Territorial Directory No. 5, Agent W. J. Prueter's I. C. C. No. 1563 (formerly 1548).

[fol. 52]

TARIFF

Issue and Number	I.C.C. No.	Commodity
TCFB 45-H (formerly 45-G)	Agent W. J. Prueter's 1562 (formerly 1555)	Grain and Grain Products
CMStP&P G.F.D. 17005-I	B-7675	Grain and Grain Products
TCFB 52-H	Agent W. J. Prueter's 1534	Livestock
TCFB 45-H (formerly 45-G)	Agent W. J. Prueter's 1562 (formerly 1555)	Grain and Grain Products
TCFB 16-L	Agent W. J. Prueter's 1541	Lumber, Shingles & other forest products
TCFB 17-S	Agent W. J. Prueter's 1511	Lumber, Shingles & other forest products
TCFB 18-P	Agent W. J. Prueter's 1474	Lumber, Shingles & other forest products

[fol. 53]

TERRITORIAL APPLICATION

Between	*And*
Stations on SP&S Ry., OT Ry. and OE Ry.	Eastern Defined Territories as described in TCFB Territorial Directory No. 5, Agent W. J. Prueter's I. C. C. No. 1563 (formerly 1548).
To	*From*
Stations on SP&S Ry., OT Ry. and OE Ry.	Sioux City, Iowa (Routing: CMStP&P Terry, Mont., NP Ry. Pasco or Spokane, Wash., SP&S)
Between	*And*
Stations on SP&S Ry., OT Ry. and OE Ry.	Eastern Defined Territories as described in TCFB Territorial Directory No. 5, Agent W. J. Prueter's I. C. C. No. 1563 (formerly 1548).
To	*From*
Stations on SP&S Ry., OT Ry. and OE Ry.	CMStP&P stations in Eastern Defined Territorial Groups F and F-1 (Routing: CMStP&P Terry, Mont., NP Ry. Pasco or Spokane, Wash., SP&S)
From	*To*
Stations on SP&S Ry., OT Ry. and OE Ry.	Points in Eastern Canada
From	*To*
Stations on SP&S Ry., OT Ry. and OE Ry.	Eastern United States points named in Tariff.
From	*To*
Stations on SP&S Ry., OT Ry. and OE Ry.	Points in North and South Dakota, Nebraska, Kansas, Texas, etc., named in Tariff.

[fol. 54]

TARIFF

Issue and Number	I.C.C. No.	Commodity
TCFB 28-O	Agent W. J. Prueter's 1545	Lumber, Shingles & other forest products
NPCFB 3-G	Agent W. R. Watson's 868	Class Rates General Commodities
NPCFB 57-F	Agent W. R. Watson's 742	Fresh Fruits and vegetables
NPCFB 13-D	Agent W. R. Watson's 798	Grain and Grain Products
NPCFB 58-D	Agent W. R. Watson's 864	Lumber, Shingles & other forest products
GN Ry. G.F.D. 156-H	A-7781	Gypsum, Plaster and related articles

[fol. 55]

TERRITORIAL APPLICATION

From	*To*
Stations on SP&S Ry., OT Ry. and OE Ry.	Points in Minnesota, Wisconsin, Iowa, Illinois, etc., named in Tariff.
Between	*And*
Stations on SP&S Ry., OT Ry. and OE Ry.	Stations in Montana, North and South Dakota, generally west of the Missouri River.
Between	*And*
Stations on SP&S Ry., OT Ry. and OE Ry.	Stations in Montana, North and South Dakota, generally west of the Missouri River.
Between	*And*
Stations on SP&S Ry., OT Ry. and OE Ry.	Stations in Montana, North and South Dakota, generally west of the Missouri River.
Between	*And*
Stations on SP&S Ry., OT Ry. and OE Ry.	Stations in Montana, North and South Dakota, generally west of the Missouri River.
To	*From*
Stations on SP&S Ry., OT Ry. and OE Ry.	Hanover, Montana (Routing: CMStP&P Hanover, GN Ry. Spokane, SP&S) Heath, Montana (Routing: CMStP&P Lewistown, Mont., GN Ry., Spokane, SP&S)

[fol. 69] [File endorsement omitted]

[fol. 70]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

Civil Action No. 58-C-77

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, Plaintiff

v.

UNITED STATES OF AMERICA; INTERSTATE COMMERCE COMMISSION; SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY; GREAT NORTHERN RAILWAY COMPANY; and NORTHERN PACIFIC RAILWAY COMPANY, Defendants

EZRA TAFT BENSON, Secretary of Agriculture of the United States, Intervening Plaintiff

MOTION OF SECRETARY OF AGRICULTURE FOR LEAVE TO INTERVENE—Filed April 28, 1958

To the Honorable Judges of the United States District Court for the District of Wisconsin—Eastern Division:

I

Ezra Taft Benson, Secretary of Agriculture of the United States, under Rule 24 of the Rules of Civil Procedure, hereby moves the Court for an order permitting him to intervene as a plaintiff in this action, so that he may make and establish the claims in the proposed complaint attached hereto.

The Secretary of Agriculture was a party in interest in the proceeding before the Interstate Commerce Commission, Docket No. 31466, *Chicago, Milwaukee, St. Paul and Pacific Railroad Company* v. *Spokane, Portland and Seattle Railway Company, et al.*, 300 I.C.C. 453, out of which this court action arose, and he may intervene in this action as a matter of right as contemplated by Title 7, Section 1291, and Title 28, Section 2323, of the United States Code. For [fol. 71] convenience there is quoted below said Section 1291 of Title 7, being Section 201 of the Agricultural Adjustment Act of 1938:

"(a) The Secretary of Agriculture is authorized to make complaint to the Interstate Commerce Commission with respect to rates, charges, tariffs, and practices relating to the transportation of farm products, and to prosecute the same before the Commission. Before hearing or disposing of any complaint (filed by any person other than the Secretary) with respect to rates, charges, tariffs, and practices relating to the transportation of farm products, the Commission shall cause the Secretary to be notified, and, upon application by the Secretary, shall permit the Secretary to appear and be heard.

"(b) If such rate, charge, tariff, or practice complained of is one affecting the public interest, upon application by the Secretary, the Commission shall make the Secretary a party to the proceeding. In such case the Secretary shall have the rights of a party before the Commission and the rights of a party to invoke and pursue original and appellate judicial proceedings involving the Commission's determination. The liability of the Secretary in any such case shall extend only to liability for court costs.

"(c) For the purposes of this section, the Interstate Commerce Commission is authorized to avail itself of the cooperation, records, services, and facilities of the Department of Agriculture.

"(d) The Secretary is authorized to cooperate with and assist cooperative associations of farmers making complaint to the Interstate Commerce Commission with respect to rates, charges, tariffs, and practices relating to the transportation of farm products."

Wherefore, Ezra Taft Benson, Secretary of Agriculture of the United States, prays that an order be entered permitting him to intervene in this action and to file the proposed complaint attached hereto.

Respectfully submitted by direction of Ezra Taft Benson, Secretary of Agriculture of the United States.

Charles W. Bucy, Assistant General Counsel.
Leonard M. Shinn, Attorney, United States Department of Agriculture, Washington 25, D. C.

[fol. 72]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

Civil Action No. 58-C-77

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, Plaintiff

v.

UNITED STATES OF AMERICA; INTERSTATE COMMERCE COMMISSION; SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY; GREAT NORTHERN RAILWAY COMPANY; and NORTHERN PACIFIC RAILWAY COMPANY, Defendants

EZRA TAFT BENSON, Secretary of Agriculture of the United States, Intervening Plaintiff

---

COMPLAINT OF SECRETARY OF AGRICULTURE—April 28, 1958

I

Intervening plaintiff, Ezra Taft Benson, Secretary of Agriculture of the United States (hereinafter referred to as the Secretary), brings this complaint to suspend, enjoin, annul and set aside the Order of the Interstate Commerce Commission (hereinafter referred to as the Commission), entered May 10, 1957, in a proceeding before the Commission, entitled Docket No. 31466, *Chicago, Milwaukee, St. Paul and Pacific Railroad Company* v. *Spokane, Portland and Seattle Railway Company, et al.*

The jurisdiction of the Court is founded upon section 17(9) of the Interstate Commerce Act (49 U.S.C. 17(9)), sections 1336, 1398, 2284, and 2321 to 2325, inclusive, of the Judicial Code (28 U.S.C. 1336, 1398, 2284, and 2321-2325), section 201 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1291), and section 10 of the Administrative Procedure Act (5 U.S.C. 1009).

II

The United States of America is named as a party defendant pursuant to section 2322 of the Judicial Code (28 U.S.C. 2322).

[fol. 73] III

The Commission is an administrative tribunal, created by the Act to Regulate Commerce approved February 4, 1887 (24 Stat. 383), with specifically vested powers and duties respecting interstate commerce under the said Act and the acts amendatory thereof and supplemental thereto, hereinafter referred to as the Interstate Commerce Act.

IV

The administrative proceeding, out of which this action arose, entitled No. 31466, *Chicago, Milwaukee, St. Paul and Pacific Railroad Company* v. *Spokane, Portland and Seattle Railway Co., et al.*, was instituted by the Commission pursuant to a complaint filed February 16, 1954, as amended August 27, 1954, by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (hereinafter referred to as the Milwaukee) against the Spokane, Portland and Seattle Railway Company, Oregon Electric Railway Company, and their connecting lines (hereinafter called the S.P. & S. system), in which the Milwaukee asked the Interstate Commerce Commission to prescribe just, reasonable and nondiscriminatory competitive joint rates and any necessary through routes, via Spokane, Washington, applicable on all freight traffic moving between points on the lines of the S.P. & S. system and points on the lines of the Milwaukee and its connections. The rates sought are on a level with those presently applicable on all freight traffic moving via Spokane between S.P. & S. system points, and points on the Northern Pacific Railway Company, hereinafter called the Northern Pacific, and the Great Northern Railway Company, hereinafter called the Great Northern, and their connections. It is alleged that the establishment of such rates and routes is necessary and desirable in the public interest and that failure and refusal of the S.P. & S. system to establish such rates and routes with the complainant is [fol. 74] violative of Sections 1(4), 3(1) and 3(4) of the Interstate Commerce Act.

V

By petition dated October 26, 1954, a true copy of which is attached hereto as Appendix "A", the Secretary of Agriculture sought leave to intervene in Commission Docket No. 31466, *Chicago, Milwaukee, St. Paul and Pacific Railroad Company* v. *Spokane, Portland and Seattle Railway Company, et al.* This petition was granted by order of the Commission dated October 27, 1954, a true copy of which is attached hereto as Appendix "B". The Secretary actively participated in all subsequent phases of the administrative proceeding.

Hearings were held before an Examiner of the Commission at Portland, Oregon, from June 24 to 30, 1954, and from February 17 to 23, 1955; at St. Paul, Minnesota, from April 5 to 8, 1955; at Chicago, Illinois, from November 9 to 12, 1954; and at Washington, D. C., from June 21 to June 23, 1955.

The Secretary as a party in interest to the proceeding before the Commission appeared by counsel and presented testimony in support of complainant. Such participation by the Secretary was in his capacity as a representative of the agricultural community and in accordance with the general authorization and direction of Congress as stated in Section 201 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1291) and Section 203(j) of the Agricultural Marketing Act of 1946 (7 U.S.C. Sec. 1622(j)).

VI

The Secretary of Agriculture of the United States alleges that the order of the Commission dated May 10, 1957, a true copy of which is attached hereto as Appendix "C", which dismissed the complaint, and the report upon which it is based (300 I.C.C. 453), are unlawful, arbitrary, capricious, and contrary to the evidence, and are based on errors of law, in that:

[fol. 75] 1. The Commission erroneously found, contrary to the evidence, that through routes do not exist on most commodities moving between points on the S.P. & S. system and points on the Milwaukee and its connections when

interchanged between the S.P. & S. system and the Milwaukee at Spokane, Washington.

2. The Commission erroneously and unlawfully found, contrary to the evidence, that the S.P. & S. system is operated under a common management and control with, and that its traffic policy is controlled by, the Great Northern and the Northern Pacific and therefore must be considered as a part of the latter carrier systems.

3. The Commission erred in refusing to find that the failure and refusal of the S.P. & S. system to join in the establishment of through routes and joint rates via Spokane with the Milwaukee and its connections, the same as apply via Spokane with the Great Northern and Northern Pacific and their connections, results in discrimination against the Milwaukee, in violation of Section 3(4) of the Interstate Commerce Act (49 U.S.C., Sec. 3(4), and in undue preference or prejudice between shippers or localities, in violation of Section 3(1) of the Interstate Commerce Act (49 U.S.C., Sec. 3(1)).

4. The Commission found, contrary to Section 1(4) of the Interstate Commerce Act (49 U.S.C., Sec. 1(4)), and contrary to the evidence, that it is not shown to be necessary or desirable in the public interest, in order to provide adequate and more efficient or more economical transportation, to require the establishment of through routes and joint rates between the S.P. & S. system and the Milwaukee and its connections via Spokane the same as apply between the S.P. & S. system and the Great Northern and Northern Pacific and their connections via Spokane.

5. The Order of the Commission dismissing the complaint is based upon findings of fact that are not supported by substantial evidence and is therefore erroneous and should be set aside (5 U.S.C. Sec. 1009(e)).

[fol. 76] VII

The agricultural community which is represented by the Secretary of Agriculture will be irreparably damaged if the Order of the Commission dated May 10, 1957, is not

enjoined, annulled and set aside, and the agricultural community is without an adequate remedy at law.

WHEREFORE, the intervening plaintiff, Ezra Taft Benson, Secretary of Agriculture of the United States, prays that upon the filing of this complaint the judge of this Court shall call to his assistance in the hearing and determination of this cause, two other judges, of whom at least one shall be a circuit judge; that process may issue against the defendants, the United States of America and the Interstate Commerce Commission; that the Court enjoin, annul and set aside the Order of the Interstate Commerce Commission entered in the proceeding entitled No. 31466, *Chicago, Milwaukee, St. Paul and Pacific Railroad Company* v. *Spokane, Portland and Seattle Railway Company, et al.*, on May 10, 1957; that the Court remand the said proceeding to the Interstate Commerce Commission for decision in accordance with Sections 1(4), 3(1), and 3(4) of the Interstate Commerce Act (49 U.S.C. 1(4), 3(1), and 3(4)); and that the intervening plaintiff have such other and further relief in the premises as may be deemed fit and proper by the Court.

Respectfully submitted, by direction of Ezra Taft Benson, Secretary of Agriculture of the United States.

Charles W. Bucy, Assistant General Counsel; Leonard M. Shinn, Attorney, United States Department of Agriculture, Washington 25, D. C.

[fol. 79]

APPENDIX "A" TO COMPLAINT OF SECRETARY OF AGRICULTURE BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 31466

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, Complainant,

v.

SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY, OREGON ELECTRIC RAILWAY COMPANY and OREGON TRUNK RAILWAY, ET AL., Defendants.

AMENDED PETITION OF EZRA TAFT BENSON, SECRETARY OF AGRICULTURE OF THE UNITED STATES, FOR LEAVE TO INTERVENE

Comes now Ezra Taft Benson, Secretary of Agriculture of the United States, and amends his petition for leave to intervene filed in this proceeding on June 24, 1954. The Secretary has an interest in the issues presented in the amended complaint filed herein on August 27, 1954; he desires to intervene in the proceeding, as enlarged by the amended complaint; and his intervention will not unduly broaden the issues herein.

I

The amended complaint brings into the issue the proposed establishment of competitive joint through rates applicable on freight traffic moving via the Spokane, Washington, gateway between points in the United States served by the [fol. 80] complainant and its connections and points in Oregon and Washington served by the Spokane, Portland and Seattle Railway Company, Oregon Electric Railway Company, and the Oregon Trunk Railway.

II

The interest of the Secretary, as stated in the original petition for leave to intervene, is based upon section 201 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1291) and section 203(j) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1622).

III

Large quantities of agricultural products are produced in and distributed from, to, and within the territories involved in the amended complaint. The States of Oregon and Washington are surplus producing areas for numerous agricultural products, and Spokane is an important gateway for their distribution.

IV

The defendants' present combination rates between points on their lines and points on the lines of the complainant and its connections, via Spokane, are unjust and unreasonable in violation of section 1(4) of the Interstate Commerce Act. The defendants' failure to establish competitive through routes and joint through rates and charges applicable on all traffic between points on their lines and points on the lines of complainant and its connections, via Spokane, constitutes violations of sections 1(4), 3(1) and 3(4) of the Interstate Commerce Act.

[fol. 81]

V

WHEREFORE, the Secretary of Agriculture requests that he be permitted to intervene in this proceeding, as enlarged by the amended complaint, and that he thereafter be treated as a party thereto, all according to the Commission's General Rules of Practice.

Respectfully submitted, by direction of Ezra Taft Benson, Secretary of Agriculture of the United States.

/s/ CHAS. B. BOWLING, Chief

/s/ JAMES L. PEASE,
Assistant Chief
Freight Rate Service Branch
Agricultural Marketing Service

/s/ CHARLES W. BUCY
Associate Solicitor

/s/ HENRY A. COCKRUM
Attorney

United States Department
of Agriculture
Washington 25, D. C.

[fol. 82]

APPENDIX "B" TO COMPLAINT OF SECRETARY OF AGRICULTURE

ORDER

INTERSTATE COMMERCE COMMISSION

No. 31466

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

v.

SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY ET AL.

IN THE MATTER OF PETITION FOR LEAVE TO AMEND INTERVENING PETITION AND FOR LEAVE TO INTERVENE

PRESENT: CHARLES D. MAHAFFIE, Commissioner, to whom the above-entitled matter has been assigned for action thereon.

Upon consideration of the record in the above-entitled proceeding and of the complaint therein, as amended, and the petition filed on behalf of the Secretary of Agriculture:

It is ordered, That the petition of the Secretary of Agriculture, for leave to intervene in this proceeding be, and it is hereby, amended in accordance with the document hereto attached marked "Amended Petition of Ezra Taft Benson, Secretary of Agriculture of the United States, for leave to intervene:"

It is further ordered, That the Secretary of Agriculture of the United States, be, and he is hereby, permitted to intervene and be treated as a party to this proceeding, as amended, with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses and be heard on brief and on oral argument, if oral argument is heard; *provided, however*, That the permission to intervene herein granted shall not be construed to allow interveners to introduce evidence which will unduly broaden the issues raised in the complaint;

It is further ordered, That a copy of the Amended Petition for Leave to Intervene, and a copy of this order, be served upon each of the parties to this proceeding.

Dated at Washington, D. C., this 27th day of October, A. D. 1954.

By th Commission, Commissioner Mahaffie.

GEORGE W. LAIRD,
Secretary.

[SEAL]

[fol. 83]

APPENDIX "C" TO COMPLAINT OF SECRETARY OF AGRICULTURE

"ORDER

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D.C., on the 10th day of May, A.D. 1957.

No. 31466

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY

v.

SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY ET AL.

This proceeding being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been made, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is ordered, That the complaint in this proceeding be, and it is hereby, dismissed.

By the Commission.

Harold D. McCoy,
Secretary."

[SEAL]

[fol. 84] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

Civil Action 58-C-77

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, Plaintiff,

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY, GREAT NORTHERN RAILWAY COMPANY, and NORTHERN PACIFIC RAILWAY COMPANY, Defendants.

MOTION OF OREGON ELECTRIC RAILWAY COMPANY AND OREGON TRUNK RAILWAY FOR LEAVE TO INTERVENE—
Filed May 9, 1958

Movants, Oregon Electric Railway Company and Oregon Trunk Railway, present this motion for leave to intervene and represent and show to the court as follows:

1. Movant Oregon Electric Railway Company is an Oregon corporation and all of its capital stock is owned by Spokane, Portland and Seattle Railway Company, named herein as a defendant.

2. Movant Oregon Trunk Railway is an Oregon corporation and all of its capital stock is owned by Spokane, Portland and Seattle Railway Company, named herein as a defendant.

3. Both movants are engaged in business as common carriers by railroad in interstate and intrastate commerce and are subject to the provisions of the Interstate Commerce Act (49 U.S.C., Secs. 1 et seq.).

4. Movants were named as parties defendant in Interstate Commerce Commission Docket No. 31466, referred to in the complaint. In the decision of the Interstate Com-

[fol. 85] merce Commission in said docket, Spokane, Portland and Seattle Railway Company and the two movants herein were sometimes collectively referred to as the SP&S system or as the SP&S.

5. Movants were parties in interest to said proceeding before the Commission in which said order under review in this action was made. Movants, by virtue of Section 2323, Title 28 U.S.C.A., have a statutory and unconditional right to intervene in this action.

6. The interests of these movants in this action are the same as those of defendant Spokane, Portland and Seattle Railway Company.

7. Attached to this motion is a copy of the answer which will be filed by these movants upon the granting by this court of this motion.

Wherefore these movants pray for an order of this court permitting them to intervene as defendants in this action, to file herein an answer in the form attached to this motion, and to be treated in all respects as defendants in this action.

Respectfully submitted,

Anthony Kane, L. E. Torinus, 1120 Great Northern Building, St. Paul 1, Minnesota; M. L. Countryman, Jr., G. Zan Golden, 1019 Northern Pacific Building, St. Paul 1, Minnesota; Charles A. Hart, [fol. 86] Fletcher Rockwood, 1410 Yeon Building, Portland 4, Oregon; John S. Best, 110 East Wisconsin Avenue, Milwaukee 2, Wisconsin; Attorneys for Movants Oregon Electric Railway Company and Oregon Trunk Railway.

Dated: May 9, 1958.

Hart, Spencer, McCulloch, Rockwood and Davies, 1410 Yeon Building, Portland 4, Oregon; Michael, Spohn, Best and Friedrich, 110 East Wisconsin Avenue, Milwaukee 2, Wisconsin, Of Counsel.

[fol. 87] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

Civil Action No. 58-C-77

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, Plaintiff,

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY, GREAT NORTHERN RAILWAY COMPANY, and NORTHERN PACIFIC RAILWAY COMPANY, Defendants.

ANSWER OF INTERVENING DEFENDANTS OREGON ELECTRIC RAILWAY COMPANY AND OREGON TRUNK RAILWAY— Filed May 9, 1958

Defendants, Oregon Electric Railway Company and Oregon Trunk Railway make this their answer to the complaint in the above-entitled case:

I

These defendants admit the allegations of paragraph I of the complaint.

II

These defendants admit the allegations of paragraph II of the complaint.

III

These defendants admit the allegations of paragraph III of the complaint.

IV

These defendants admit that plaintiff filed a complaint with the Interstate Commerce Commission, later amended by an amended complaint, and that a true copy of said

amended complaint is contained in Exhibit "A" attached to the complaint in this action. These defendants refer to [fol. 88] said Exhibit "A" for a correct statement of the contents of said amended complaint. These defendants refer to the statutes of the United States for a correct statement of the provisions of the sections of the Interstate Commerce Act referred to in paragraph IV and referred to in said Exhibit "A." Except as so admitted, these defendants deny the allegations of said paragraph IV.

V

Answering paragraph V of the complaint, these defendants refer to said Exhibit "A" and admit the allegations of said paragraph V to the extent that said paragraph V correctly summarizes the contents of said complaint; but except as so admitted, these defendants deny the allegations of paragraph V.

VI

Answering paragraph VI of the complaint, these defendants refer to said Exhibit "A" and admit the allegations of said paragraph VI to the extent that said paragraph VI correctly summarizes the contents of said complaint; but except as so admitted, these defendants deny the allegations of paragraph VI.

VII

Answering paragraph VII of the complaint, these defendants refer to said Exhibit "A" and admit the allegations of said paragraph VII to the extent that said paragraph VII correctly summarizes the contents of said complaint; but except as so admitted, these defendants deny the allegations of paragraph VII.

VIII

Answering paragraph VIII of the complaint, these defendants refer to said Exhibit "A" and admit the allegations of said paragraph VIII to the extent that said para- [fol. 89] graph VIII correctly summarizes the contents of said complaint; but except as so admitted, these defendants deny the allegations of paragraph VIII.

IX

These defendants admit the allegations of paragraph IX of the complaint.

Further answering paragraph IX, these defendants allege that in addition to those who intervened and appeared in behalf of the complainant, there were intervenors before the Interstate Commerce Commission in behalf of these defendants, and, in addition to various officials of these defendants, many witnesses who were shippers and represented shippers testified in support of these defendants.

X

Answering paragraph X of the complaint, these defendants refer to the complete report proposed by the Examiner in the proceeding before the Interstate Commerce Commission for a full and true statement of the contents of said Examiner's report. To the extent that said paragraph X correctly summarizes said report, these defendants admit the allegations of said paragraph; but except as so admitted, these defendants deny the allegations of paragraph X of the complaint.

XI

Answering paragraph XI of the complaint, these defendants refer to the decision of the Interstate Commerce Commission in its Docket No. 31466, Chicago, Milwaukee, St. Paul and Pacific Railroad Company v. Spokane, Portland and Seattle Railway Company et al., reported in 300 I.C.C. 453, for a complete statement of the decision of the Commission in said proceeding. To the extent that said paragraph XI correctly summarizes said decision of the Commission, these defendants admit the allegations of said paragraph; but except as so admitted, these defendants [fol. 90] deny the allegations of paragraph XI of said complaint.

Further answering paragraph XI of the complaint, these defendants allege that the order of the Interstate Commerce Commission of October 24, 1957, which denied the petition of plaintiff for reargument and reconsideration, was concurred in by ten of the eleven members of the Com-

mission, one commissioner not having participated in the consideration of said petition.

XII

These defendants deny the allegations of paragraph XII of the complaint, and the whole thereof.

XIII

These defendants deny the allegations of paragraph XIII of the complaint, and the whole thereof.

XIV

These defendants admit that the statutes of the United States authorize the commencement of this proceeding by the plaintiff.

XV

Except as these defendants have herein admitted the allegations of the complaint, these defendants deny each and every allegation of fact and thing contained in said complaint.

Wherefore these intervening defendants having fully answered the allegations of the complaint, pray that the relief sought by plaintiff be denied, that the complaint be dismissed, and that these defendants have and recover their costs herein incurred.

Respectfully submitted,

Anthony Kane, L. E. Torinus, 1120 Great Northern Building, St. Paul 1, Minnesota, M. L. Country-[fol. 91] man, Jr., G. Zan Golden, 1018 Northern Pacific Building, St. Paul 1, Minnesota, Charles A. Hart, Fletcher Rockwood, 1410 Yeon Building, Portland 4, Oregon, John S. Best, 110 East Wisconsin Avenue, Milwaukee 2, Wisconsin, Attorneys for Intervening Defendants, Oregon Electric Railway Company and Oregon Trunk Railway.

Hart, Spencer, McCulloch, Rockwood and Davies, 1410 Yeon Building, Portland 4, Oregon, Michael, Spohn, Best and Friedrich, 110 East Wisconsin Avenue, Milwaukee 2, Wisconsin, Of Counsel.

[fol. 93] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

Civil Action No. 58-C-77

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY, Plaintiff,

v.

UNITED STATES OF AMERICA, et al., Defendants.

JOINT ANSWER OF THE UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION—Filed June 2, 1958

The United States of America and the Interstate Commerce Commission, defendants herein, answer the complaint as follows:

I.

Admit the allegations contained in paragraphs I, II, and III of the complaint.

II.

Admit the allegations contained in paragraph IV of the complaint except aver that plaintiff filed a complaint with the Interstate Commerce Commission on February 26, 1954, rather than on February 16, 1954, as alleged, and refer to the amended complaint, attached as Exhibit "A" to the complaint, and to the applicable statutes of the United States for a correct statement of their contents.

III.

Admit the allegations contained in paragraphs V, VI, VII, and VIII of the complaint to the extent that said paragraphs summarize the contents, allegations and prayers of Exhibit "A" attached to the complaint.

[fol. 94] IV.

Admit the allegations contained in paragraph IX of the complaint, but aver that in addition to various officials

of the railroad defendants herein, many witnesses who were shippers or represented shippers testified in support of the railroad defendants herein.

V.

Admit the allegations contained in paragraphs X and XI of the complaint but refer to the proposed report of the hearing examiner and the report of the Commission for full, true and correct statements of the respective contents thereof.

VI.

Deny the allegations contained in paragraphs XII and XIII of the complaint.

VII.

For further answer to the allegations contained in the complaint, defendants deny that the action of the Interstate Commerce Commission challenged herein is unlawful for the reasons specified in the complaint or for any other reason whatsoever. Defendants aver that the action of the Commission is fully supported and justified by the record, and that in taking such action the Commission carefully considered the National Transportation Policy and considered and weighed, in light of its own knowledge and experience, each fact, circumstance and condition called to its attention on behalf of the parties to the proceeding by their respective counsel; and that said action is not arbitrary, capricious, unjust, or contrary to law.

Except as herein expressly admitted, the defendants deny each and every allegation contained in the complaint.

[fol. 95] WHEREFORE, the defendants pray that the relief sought in the complaint be denied, and that the complaint be dismissed with costs.

James E. Kilday, Charles R. Esherick, Attorneys, Department of Justice, Washington 25, D. C., Victor R. Hansen, Assistant Attorney General, Edward G. Minor, United States Attorney, Attorneys for the United States of America.

Arthur J. Cerra, Attorney, Interstate Commerce Commission, Washington 25, D. C., Robert W. Ginnane, General Counsel, Attorneys for the Interstate Commerce Commission.

[fol. 99]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

Civil Action No. 58-C-77

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, Plaintiff,

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY, GREAT NORTHERN RAILWAY COMPANY, and NORTHERN PACIFIC RAILWAY COMPANY, Defendants.

AMENDED ANSWER OF DEFENDANTS SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY, GREAT NORTHERN RAILWAY COMPANY, AND NORTHERN PACIFIC RAILWAY COMPANY—Filed June 6, 1958

Defendants Spokane, Portland and Seattle Railway Company, Great Northern Railway Company, and Northern Pacific Railway Company, with leave of court, make and file this their amended answer to the complaint in the above-entitled case.

I

These defendants admit the allegations of paragraph I of the complaint.

II

These defendants admit the allegations of paragraph II of the complaint.

III

These defendants admit the allegations of paragraph III of the complaint.

IV

These defendants admit that plaintiff filed a complaint with the Interstate Commerce Commission, later amended [fol. 100] by an amended complaint, and that a true copy

of said amended complaint is contained in Exhibit "A" attached to the complaint in this action. These defendants refer to said Exhibit "A" for a correct statement of the contents of said amended complaint. These defendants refer to the statutes of the United States for a correct statement of the provisions of the sections of the Interstate Commerce Act referred to in paragraph IV and referred to in said Exhibit "A". Except as so admitted, these defendants deny the allegations of said paragraph IV.

V

Answering paragraph V of the complaint, these defendants refer to said Exhibit "A" and admit the allegations of said paragraph V to the extent that said paragraph V correctly summarizes the contents of said complaint; but except as so admitted, these defendants deny the allegations of paragraph V.

VI

Answering paragraph VI of the complaint, these defendants refer to said Exhibit "A" and admit the allegations of said paragraph VI to the extent that said paragraph VI correctly summarizes the contents of said complaint; but except as so admitted, these defendants deny the allegations of paragraph VI.

VII

Answering paragraph VII of the complaint, these defendants refer to said Exhibit "A" and admit the allegations of said paragraph VII to the extent that said paragraph VII correctly summarizes the contents of said complaint; but except as so admitted, these defendants deny the allegations of paragraph VII.

VIII

Answering paragraph VIII of the complaint, these defendants refer to said Exhibit "A" and admit the allega- [fol. 101] tions of said paragraph VIII to the extent that said paragraph VIII correctly summarizes the contents of said complaint; but except as so admitted, these defendants deny the allegations of paragraph VIII.

IX

These defendants admit the allegations of paragraph IX of the complaint.

Further answering paragraph IX, these defendants allege as follows: Defendant Great Northern Railway Company, a corporation organized and existing under the laws of the State of Minnesota, and defendant Northern Pacific Railway Company, a corporation organized and existing under the laws of the State of Wisconsin, are both engaged in business as common carriers by railroad in interstate and intrastate commerce and are subject to the provisions of the Interstate Commerce Act (49 U.S.C., Sections 1 et seq.). Said corporations were not named as parties in the initial complaint filed with the Interstate Commerce Commission in the proceedings referred to in paragraph I of the complaint herein and were not named as parties in the complaint as amended, referred to in paragraph IV of the complaint herein and attached thereto as Exhibit "A". However, said corporations duly intervened and appeared in said proceedings before the Interstate Commerce Commission on behalf of the defendants. These defendants further allege that in addition to those who intervened and appeared in said proceedings before the Interstate Commerce Commission in behalf of the complaint, various others in addition to Great Northern Railway Company and Northern Pacific Railway Company intervened and appeared therein on behalf of the defendants and, in addition to the various officials of these defendants, many witnesses who were shippers and represented shippers testified [fol. 102] in support of the defendants and the interveners in support of defendants in said proceedings before the Interstate Commerce Commission. Defendants Great Northern Railway Company and Northern Pacific Railway Company each possessed a substantial pecuniary interest in the issues before the Interstate Commerce Commission in said proceedings in which they were allowed to intervene and likewise each has a substantial pecuniary interest in the issues involved in this action.

X

Answering paragraph X of the complaint, these defendants refer to the complete report proposed by the Examiner in the proceeding before the Interstate Commerce Commission for a full and true statement of the contents of said Examiner's report. To the extent that said paragraph X correctly summarizes said report, these defendants admit the allegations of said paragraph; but except as so admitted, these defendants deny the allegations of paragraph X of the complaint.

XI

Answering paragraph XI of the complaint, these defendants refer to the decision of the Interstate Commerce Commission in its Docket No. 31466, Chicago, Milwaukee, St. Paul and Pacific Railroad Company *v.* Spokane, Portland and Seattle Railway Company et al., reported in 300 I.C.C. 453, for a complete statement of the decision of the Commission in said proceeding. To the extent that said paragraph XI correctly summarizes said decision of the Commission, these defendants admit the allegations of said paragraph; but except as so admitted, these defendants deny the allegations of paragraph XI of said complaint.

Further answering paragraph XI of the complaint, these defendants allege that the order of the Interstate Commerce Commission of October 24, 1957, which denied the petition of [fol. 103] plaintiff for reargument and reconsideration, was concurred in by ten of the eleven members of the Commission, one commissioner not having participated in the consideration of said petition.

XII

These defendants deny the allegations of paragraph XII of the complaint, and the whole thereof.

XIII

These defendants deny the allegations of paragraph XIII of the complaint, and the whole thereof.

XIV

These defendants admit that the statutes of the United States authorize the commencement of this proceeding by the plaintiff.

XV

Except as these defendants have herein admitted the allegations of the complaint, these defendants deny each and every allegation of fact and thing contained in said complaint.

Wherefore these defendants, having fully answered the allegations of the complaint, pray that the relief sought by plaintiff be denied, that the complaint be dismissed, and that these defendants have and recover their costs herein incurred.

Respectfully submitted,

Anthony Kane, L. E. Torinus, 1120 Great Northern Building, St. Paul 1, Minnesota, M. L. Countryman, Jr., G. Zan Golden, 1018 Northern Pacific Building, St. Paul 1, Minnesota, Charles A. Hart, [fol. 104] Fletcher Rockwood, 1410 Yeon Building, Portland 4, Oregon, John S. Best, 110 East Wisconsin Avenue, Milwaukee 2, Wisconsin, Attorneys for Defendants, Spokane, Portland and Seattle Railway Company, Great Northern Railway Company, and Northern Pacific Railway Company.

Hart, Spencer, McCulloch, Rockwood and Davies, 1410 Yeon Building, Portland 4, Oregon, Michael Spohn, Best and Friedrich, 110 East Wisconsin Avenue, Milwaukee 2, Wisconsin, Of Counsel.

[fol. 105] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

Civil Action No. 58-C-77

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, Plaintiff,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY, GREAT NORTHERN RAILWAY COMPANY, and NORTHERN PACIFIC RAILWAY COMPANY, Defendants.

MOTION OF CHICAGO AND NORTH WESTERN RAILWAY COMPANY, ET AL. FOR LEAVE TO INTERVENE AS INTERVENING DEFENDANTS—Filed July 11, 1958

Come now the Chicago and North Western Railway Company, Chicago, Burlington & Quincy Railroad Company, Chicago, Rock Island and Pacific Railroad Company and The Minneapolis & St. Louis Railway Company and move the Court pursuant to the provisions of 28 U.S.C.A. sec. 2323 that an order be issued permitting them to intervene in and become parties defendant in this proceeding and granting leave to file the answer in intervention herein, a copy of which is hereto attached. As grounds therefor, movants respectfully represent that they were parties defendant in interest to the proceeding before the Interstate Commerce Commission in Docket No. 31466, [fol. 106] "Chicago, Milwaukee, St. Paul and Pacific Railroad Company v. Spokane, Portland and Seattle Railway Company, et al", in which the order herein sought to be suspended, annulled, enjoined and set aside was entered. The order of the Interstate Commerce Commission and the com-

plaint filed herein involve the interests of these moving defendants, all of whom were referred to collectively by the Interstate Commerce Commission in said order as 'Western Truck Lines' (W.T.L. Lines).

Respectfully submitted,

Carl McGowan, Fred O. Stgadry, Jordan J. Hillman, 400 W. Madison St., Chicago 6, Ill.

Russell B. James, 547 W. Jackson Blvd., Chicago 6, Ill., Attorney for Chicago, Burlington & Quincy Railroad Company.

Thomas I. Megan, LaSalle St. Station, Chicago 5, Illinois, Attorney for Chicago, Rock Island and Pacific Railroad Company.

Richard Musenbrock, 111 E. Franklin Av., Minneapolis 4, Minn., Attorney for The Minneapolis & St. Louis Railway Company.

Wickham, Borgelt, Skogstad & Powell, 828 N. Broadway, Milwaukee, Wis., Joint Local Attorneys, By: E. H. Borgelt, Reubin W. Peterson, Jr.

Dated this 10 day of July, 1958.

[fol. 107]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

Civil Action No. 58-C-77

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, Plaintiff,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY, GREAT NORTHERN RAILWAY COMPANY, and NORTHERN PACIFIC RAILWAY COMPANY, Defendants.

JOINT ANSWER OF INTERVENING DEFENDANTS CHICAGO AND NORTH WESTERN RAILWAY COMPANY, CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY AND THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY—Filed July 14, 1958

Intervening defendants Chicago and North Western Railway Company, Chicago, Burlington & Quincy Railroad Company, Chicago, Rock Island and Pacific Railroad Company and The Minneapolis & St. Louis Railway Company make this their answer to the complaint in the above entitled cause.

I.

Admit the allegations contained in Paragraph I, II, and III of the complaint.

II.

Admit as alleged in Paragraph IV that plaintiff filed a complaint with the Interstate Commerce Commission, later [fol. 108] amended by an amended complaint, and that a true copy of said amended complaint is contained in Exhibit A attached to the complaint in this action. Except as so admitted, these defendants deny the allegations of said Paragraph IV.

III.

Admit the allegations contained in Paragraphs V, VI, VII and VIII of the complaint to the extent that said paragraphs correctly summarize the contents and allegations contained in the amended complaint filed with the Interstate Commerce Commission attached as Exhibit A to the complaint in this action; but except as so admitted, these defendants deny the allegations of Paragraphs V, VI, VII and VIII.

IV.

Admit the allegations contained in Paragraph IX of the complaint and aver that in addition to evidence in support of complainant, there was also introduced evidence and testimony in support of these defendants.

V.

Admit the allegations contained in Paragraphs X and XI of the complaint but refer to the proposed report of the Hearing Examiner and to the report of the Commission for a true and correct statement of the contents thereof.

VI.

Deny the allegations contained in Paragraphs XII and XIII of the complaint and the whole thereof.

VII.

Except as these defendants have herein admitted the allegations of the complaint, these defendants deny each and every allegation of fact and thing contained in said complaint.

[fol. 109] Wherefore, the defendants, having fully answered the allegations of the complaint, pray that the relief sought by complainant be denied, that the complaint be dismissed, and that these defendants have and recover their costs herein incurred.

Respectfully submitted,

Carl McGowan, Fred O. Steadry, Jordan J. Hillman, 400 W. Madison St., Chicago 6, Ill., Attorneys for Chicago and North Western Railway Company.

Russell B. James, 547 W. Jackson Blvd., Chicago 6, Ill., Attorney for Chicago, Burlington & Quincy Railroad Company.

Thomas I. Megan, LaSalle St. Station, Chicago 5, Illinois, Attorney for Chicago, Rock Island and Pacific Railroad Company.

Richard Musenbrock, 111 E. Franklin Av., Minneapolis 4, Minn., Attorney for The Minneapolis & St. Louis Railway Company.

Wickham, Borgelt, Skogstad & Powell, 828 N. Broadway, Milwaukee, Wis., Joint Local Attorneys, By: E. H. Borgelt, Reubin W. Peterson, Jr.

[fol. 110] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

Civil Action No. 58-C-77

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, Plaintiff,

vs.

UNITED STATES OF AMERICA; INTERSTATE COMMERCE COMMISSION; SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY; GREAT NORTHERN RAILWAY COMPANY; and NORTHERN PACIFIC RAILWAY COMPANY, Defendants.

MOTION OF THE NATIONAL LIVE STOCK PRODUCERS ASSOCIATION, ET AL. FOR LEAVE TO INTERVENE—Filed August 18, 1958

To the Honorable Judges of the United States District Court for the District of Wisconsin, Eastern Division.

I

The National Live Stock Producers Association, the American National Cattlemen's Association, the National Wool Growers Association, and the Chicago Producers Commission Association, hereby move this Honorable Court for an order pursuant to Rule 24 (a) and (c) of the Federal Rules of Civil Procedure permitting them to intervene as parties plaintiff in the above entitled proceeding.

II

The National Live Stock Producers Association, is a co-operative representing 555,000 live stock growers and composed of twenty-two cooperative live stock associations that are engaged in selling and buying live stock for their members and patrons on over eighty-six live stock markets and other places throughout the country. Its principal office is located at 139 North Clark Street, Chicago 2, Illinois.

[fol. 111] The American National Cattlemen's Association is a voluntary non-profit organization of cattlemen and State associations of cattlemen representing the industry with membership principally in 22 states west of the Mississippi River and in the Gulf States, and with individual members in Michigan, Iowa, Minnesota, South Carolina and Virginia, with its principal office at 801 East 17th Avenue, Denver 18, Colorado.

The National Wool Growers Association is a voluntary non-profit service organization sponsored and supported largely by wool growers' associations of the States of Arizona, California, Colorado, Idaho, Montana, Nevada, Oregon, Texas, Utah, Washington, Western South Dakota, and Wyoming, with some individual members in other States. Its principal office is located at 414 Crandall Building, Salt Lake City 1, Utah.

That the Chicago Producers Commission Association is a co-operative association and represents approximately 27,000 live stock producers, that it is incorporated under the laws of the State of Illinois, with its principal offices at the Union Stock Yards in Chicago, Illinois, that it receives, handles and sells at the public live stock market,

at the said Union Stock Yards a large volume of cattle, calves, hogs, and sheep, from about twenty-one states.

III

Movant associations have an important and pecuniary interest in the issues involved in the above entitled proceeding and the members are engaged in the production, buying, selling and shipping of live stock within, to, and from the area involved in this proceeding and that they pay and bear the charges for the transportation of such live stock.

IV

That the movant associations were intervening complainants before the Interstate Commerce Commission in the proceedings in which the order of that Commission is [fol. 112] here assailed and therefore are authorized to intervene in this proceeding as of right under the provisions of Section 2323 of the Judicial Code (28 U.S.C.A., Section 2323).

Accompanied herewith, pursuant to provisions of Rule 24(c) of the Federal Rules of Civil Procedure (28 U.S.C.A.) is the complaint of the movants, that sets forth the claim for which intervention is sought.

Wherefore, movant associations pray for an order granting them leave to intervene as plaintiffs in the above entitled proceeding, and to file the complaint which is tendered herewith.

Respectfully submitted,

Lee J. Quasey, Commerce Counsel, 139 North Clark Street, Chicago 2, Illinois, Attorney for the Movant Associations.

[fol. 113]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

Civil Action No. 58-C-77

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, Plaintiff,

vs.

UNITED STATES OF AMERICA; INTERSTATE COMMERCE COMMISSION; SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY; GREAT NORTHERN RAILWAY COMPANY; and NORTHERN PACIFIC RAILWAY COMPANY, Defendants.

COMPLAINT OF THE NATIONAL LIVE STOCK PRODUCERS ASSOCIATION—Filed August 18, 1958

Intervening plaintiffs, the National Live Stock Producers Association, American National Cattlemen's Association, National Wool Growers Association, and Chicago Producers Commission Association, for their complaint and to avoid reiteration and repetition, adopt as their own and as if pleaded herein, the intervening complaint filed in this court by Ezra Taft Benson, Secretary of Agriculture of the United States, to suspend, enjoin, annul, and set aside the Order of the Interstate Commerce Commission, entered May 10, 1957, in I.C.C. Docket No. 31466, *Chicago, Milwaukee, St. Paul and Pacific Railroad Company* vs. *Spokane, Portland, and Seattle Railway Company*, et al.

[fol. 114] Wherefore, intervening plaintiffs herein pray that the relief requested in the complaint of Ezra Taft Benson, Secretary of Agriculture, herein referred to, be granted.

Respectfully submitted,

Lee J. Quasey, 139 North Clark Street, Chicago 2, Illinois, Attorney for Intervening Plaintiffs.

[fol. 117] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

No. 58-C-77

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, Plaintiff,

vs.

UNITED STATES OF AMERICA; INTERSTATE COMMERCE COMMISSION; SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY; GREAT NORTHERN RAILWAY COMPANY; and NORTHERN PACIFIC RAILWAY COMPANY, Defendants.

EZRA TAFT BENSON, Secretary of Agriculture of the United States; THE NATIONAL LIVE STOCK PRODUCERS ASSOCIATION; THE AMERICAN NATIONAL CATTLEMEN'S ASSOCIATION; THE NATIONAL WOOL GROWERS ASSOCIATION; and THE CHICAGO PRODUCERS COMMISSION ASSOCIATION, Intervening Plaintiffs.

OREGON ELECTRIC RAILWAY COMPANY; OREGON TRUNK RAILWAY; CHICAGO AND NORTHWESTERN RAILWAY COMPANY; CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY; CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY; and THE MINNEAPOLIS AND ST. LOUIS RAILWAY COMPANY, Intervening Defendants.

ORDER FOLLOWING PRE-TRIAL CONFERENCE ORDER GRANTING LEAVE TO INTERVENE AND ORDER GRANTING LEAVE TO AMEND ANSWER—September 24, 1958

The parties having appeared by their respective counsel at a pre-trial conference in the above matter, held on September 23, 1958, pursuant to notice,

It Is Ordered:

1. The motions of Ezra Taft Benson, Secretary of Agriculture of the United States, and The National Live Stock Producers Association, The American National Cattlemen's

[fol. 118] Association, The National Wool Growers Association and The Chicago Producers Commission Association for leave to intervene in this action as parties plaintiff are hereby granted and the form of the complaint of said movants attached to and filed with their motions for leave to intervene shall be filed and shall be treated for all purposes as the complaints of said movants.

2. The Motions of Oregon Electric Railway Company, Oregon Trunk Railway, Chicago and Northwestern Railway Company, Chicago, Burlington and Quincy Railroad Company, Chicago, Rock Island and Pacific Railroad Company and The Minneapolis and St. Louis Railway Company for leave to intervene in this action as parties defendant are hereby granted and the form of answer of said movants attached to and filed with their motions for leave to intervene shall be filed and shall be treated for all purposes as the answer of said movants.

3. The motion of the defendants, Spokane, Portland and Seattle Railway Company, Great Northern Railway Company and Northern Pacific Railway Company for leave to file an amended answer to the complaint is hereby granted, and the form of amended answer attached to and filed with said motion shall be filed and shall be treated for all purposes as the amended answer of said movants.

Counsel for all parties having so agreed,

It Is Ordered: That the subsequent course of this action shall be governed by the following stipulations unless modified by the Court to prevent manifest injustices;

1. Opening briefs of the plaintiff and intervening plaintiffs will be filed not later than November 10, 1958. Answering briefs of the defendants and intervening defendants will be filed not later than January 10, 1959. Reply briefs will be filed not later than January 30, 1959.

[fol. 119] 2. When all briefs have been filed, the Court will hold a conference for the purpose of setting a date for argument and designating the time to be granted to each party for argument.

3. Not later than October 3, 1958, counsel for the plaintiff will file with the Court that portion of the record of

proceedings before the Interstate Commerce Commission determined by him to be pertinent to this case. The other parties may supplement such record by filing such additional portions thereof as they deem pertinent, on or before January 10, 1959.

Dated, Milwaukee, Wisconsin, this 24th day of September, 1958.

Robert E. Tehan, U. S. District Judge

[fol. 120] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

Civil Action No. 58-C-77

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, Plaintiff,

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY, GREAT NORTHERN RAILWAY COMPANY, and NORTHERN PACIFIC RAILWAY COMPANY, Defendants.

ANSWER OF DEFENDANTS SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY, GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY, AND INTERVENING DEFENDANTS OREGON ELECTRIC RAILWAY COMPANY AND OREGON TRUNK RAILWAY TO COMPLAINT OF INTERVENING PLAINTIFF EZRA TAFT BENSON, SECRETARY OF AGRICULTURE OF THE UNITED STATES, AND TO COMPLAINT OF NATIONAL LIVESTOCK PRODUCERS ASSOCIATION, AMERICAN NATIONAL CATTLEMEN'S ASSOCIATION, NATIONAL WOOL GROWERS' ASSOCIATION AND CHICAGO PRODUCERS COMMISSION ASSOCIATION—Filed October 3, 1958

Defendants, Spokane, Portland and Seattle Railway Company, Great Northern Railway Company, Northern Pacific Railway Company, and intervening defendants, Ore-

gon Electric Railway Company and Oregon Trunk Railway, make and file this their answer to the complaint of intervening plaintiff Ezra Taft Benson, Secretary of Agriculture of the United States (hereinafter for brevity referred to as the "Secretary"), and to complaint of National Livestock Producers Association, American National Cattlemen's Association, National Wool Growers Association, and Chicago Producers Commission Association (hereinafter for brevity collectively referred to as the "Livestock Associations").

I

These defendants admit the allegations of paragraph I of the Secretary's complaint.

II

These defendants admit the allegations of paragraph II of the Secretary's complaint.

III

These defendants admit the allegations of paragraph III of the Secretary's complaint.

[fol. 121] IV

Answering paragraph IV of the Secretary's complaint these defendants admit that the administrative proceedings out of which this action arose entitled: No. 31466, Chicago, Milwaukee, St. Paul and Pacific Railroad Company v. Spokane, Portland and Seattle Railway Company et al., was instituted pursuant to a complaint filed February 16, 1954, as amended by an amended complaint filed August 27, 1954, by Chicago, Milwaukee, St. Paul and Pacific Railroad Company as complainant, and admit the allegations of said paragraph IV to the extent that said paragraph IV correctly summarizes the contents of said complaint but, except as so admitted, these defendants deny the allegations of paragraph IV.

V

These defendants admit the allegations of paragraph V of the Secretary's complaint except the second paragraph thereof wherein the Secretary alleges facts relating to the dates of hearings before the Examiner, and these defendants allege that to correctly state those facts the paragraph should read:

"Hearings were held before an Examiner of the Commission at Portland, Oregon, from June 24 to 30, 1954; from February 17 to 23, 1955; at St. Paul, Minnesota, from April 5 to 15, 1955; at Chicago, Illinois, from November 9 to 13, 1954, and at Washington, D. C. from June 21 to June 23, 1955."

VI

These defendants deny the allegations of paragraph VI of the Secretary's complaint and the whole thereof.

VII

These defendants deny the allegations of paragraph VII of the Secretary's complaint and the whole thereof.

VIII

Except as these defendants have herein admitted the allegations of the Secretary's complaint, these defendants deny each and every allegation of fact and thing contained in the Secretary's complaint.

[fol. 122] IX

The Livestock Associations by their complaint having adopted as their own, as if pleaded therein, the intervening complaint filed by the Secretary and having included in said complaint no allegations of fact in addition to those contained in the Secretary's complaint, these defendants in answer to the complaint of the Livestock Associations admit and deny the allegations contained in the Secretary's complaint so incorporated by reference in the complaint of the Livestock Associations to the same extent as the allega-

tions of the Secretary's complaint are admitted and denied in the foregoing paragraphs I to VIII inclusive of this answer.

Wherefore these defendants, having fully answered the allegations of the Secretary's complaint and the allegations of the Livestock Associations' complaint, pray that the relief sought by the Secretary as intervening plaintiff be denied and that the Secretary's complaint be dismissed and that the relief sought by the intervening plaintiff Livestock Associations be denied and that their complaint be dismissed, and that these defendants have and recover their costs herein incurred.

Respectfully submitted,

Anthony Kane, L. E. Torinus, 1120 Great Northern Building, St. Paul 1, Minnesota, M. L. Countryman, Jr., G. Zan Golden, 1019 Northern Pacific Building, St. Paul 1, Minnesota, Charles A. Hart, [fol. 123] Fletcher Rockwood, 1410 Yeon Building, Portland 4, Oregon, John S. Best, 110 East Wisconsin Avenue, Milwaukee 2, Wisconsin, Attorneys for Defendants, Spokane, Portland and Seattle Railway Company, Great Northern Railway Company, Northern Pacific Railway Company, Oregon Electric Railway Company and Oregon Trunk Railway.

Hart, Spencer, McCulloch, Rockwood and Davies, 1410 Yeon Building, Portland 4, Oregon. Michael, Spohn, Best and Friedrich, 110 East Wisconsin Avenue, Milwaukee 2, Wisconsin. Of Counsel.

[fol. 127] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

Civil Action No. 58-C-77

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY, et al., Plaintiffs,

v.

UNITED STATES OF AMERICA, et al., Defendants.

JOINT ANSWER OF THE UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION TO THE COMPLAINTS OF INTERVENING PLAINTIFFS, EZRA TAFT BENSON, SECRETARY OF AGRICULTURE OF THE UNITED STATES, NATIONAL LIVESTOCK PRODUCERS ASSOCIATION, AMERICAN NATIONAL CATTLEMEN'S ASSOCIATION, NATIONAL WOOL GROWERS' ASSOCIATION, AND CHICAGO PRODUCERS COMMISSION ASSOCIATION—Filed November 6, 1958

The United States of America and the Interstate Commerce Commission, defendants herein, answer the complaints by the intervening plaintiffs as follows:

I.

Admit the allegations contained in paragraphs I, II, and III of said complaints.

II.

Admit the allegations contained in paragraph IV of said complaints except aver that plaintiff filed a complaint with the Interstate Commerce Commission on February 26, 1954, [fol. 128] rather than on February 16, 1954, as alleged, and refer to the amended complaint filed August 27, 1954, and to the applicable statutes of the United States for a correct statement of their contents.

III.

Admit the allegations contained in paragraph V of said complaints except aver that the hearings before the Ex-

aminer at St. Paul, Minnesota and Chicago, Illinois, were held from April 5 to 15, 1955, and November 9 to 13, 1954, respectively, rather than April 5 to 8, 1955, and November 9 to 12, 1954, as alleged.

IV.

Deny each and every allegation contained in paragraphs VI and VII of said complaints.

V.

For further answer to the allegations contained in the complaints of the intervening plaintiffs, these defendants deny that the action of the Interstate Commerce Commission challenged herein is unlawful for the reasons specified or for any other reason whatsoever. Defendants aver that the action of the Commission is fully supported and justified by the record, and that in taking such action the Commission carefully considered the National Transportation Policy and considered and weighed, in light of its own knowledge and experience, each fact, circumstance and condition called to its attention on behalf of the parties to the proceeding by their respective counsel; and that said action is not arbitrary, capricious, unjust, or contrary to law.

Except as herein expressly admitted, these defendants deny each and every allegation contained in the complaint.

[fol. 129] Wherefore, these defendants pray that the relief sought in the complaints of the intervening plaintiffs be denied, and that said complaints be dismissed with costs.

James E. Kilday, Charles R. Esherick, Attorneys, Department of Justice, Washington 25, D. C., Victor R. Hansen, Assistant Attorney General, Edward G. Minor, United States Attorney, Milwaukee, Wisconsin, Attorneys for the United States of America.

Arthur J. Cerra, Assistant General Counsel, Interstate Commerce Commission, 12th & Constitution Ave., N.W., Washington 25, D. C., Robert W. Ginnane, General Counsel, Charlie H. Johns, Associate General Counsel, Attorneys for the Interstate Commerce Commission.

[fol. 130] [File endorsement omitted]

BEFORE INTERSTATE COMMERCE COMMISSION

No. 31466

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY,

v.

SPOKANE, PORTLAND & SEATTLE RAILWAY COMPANY et al.

Decided May 10, 1957

Failure and refusal of the Spokane, Portland & Seattle Railway Company and its system lines to join in the establishment of through routes and joint rates via Spokane, Wash., in connection with the complainant and its connections, the same as apply via Spokane and its parent lines, the Great Northern Railway Company and Northern Pacific Railway Company, found not to discriminate against the complainant or to result in undue preference or prejudice between shippers or localities, and the establishment of such routes and rates in connection with the complainant found not shown to be necessary or desirable in the public interest in order to provide adequate, and more efficient or more economic, transportation. Complaint dismissed.

Thomas H. Maguire, R. K. Merrill, W. J. Quinn, Carson L. Taylor, and B. E. Lutterman for complainant.

Fletcher Rockwood and Charles A. Hart for certain defendants and interveners.

Harry E. Boe, Fred O. Steadry, Jordan J. Hillman, Richard Musenbrock, and Russell B. James for other defendants.

L. E. Torinus, Edwin C. Matthias, Curtis H. Berg, R. Paul Tjossem, G. Zan Golden, and M. L. Countryman, Jr., for intervening railroads.

Charles B. Bowling, Charles W. Bucy, Henry A. Cockrum, and J. L. Pease for Secretary of Agriculture; C. W. Ferguson and Thomas W. Dench for Public Utilities Commission of the State of Oregon; C. L. Doherty for Public Utilities Commission of the State of South Dakota; and John L. Fox for Public Utilities Commission of the State of Idaho, interveners.

S. W. W. Carr, Frank A. Emme, Henry Beck, Mark Houston, Paul K. Byers, R. T. Titus, Calvin L. Blaine, Charles E. Blaine, and Lee J. Quasey for other interveners.

REPORT OF THE COMMISSION

By the Commission:

Exceptions to the report proposed by the examiner were filed by the complainant, certain defendants, and certain interveners, and the issues were orally argued. Our con- [fol. 131] clusions differ in part from those recommended. Exceptions and requested findings not discussed in this report nor reflected in our findings or conclusions have been considered and found not justified.

The complainant, sometimes called the Milwaukee, is a common carrier by railroad operating in interstate commerce within the States of Washington, Idaho, Montana, North Dakota, South Dakota, Minnesota, Wisconsin, Michigan, Iowa, Illinois, Indiana, Missouri, and Nebraska. By complaint filed on February 26, 1954, as amended on August 27, 1954, it alleges that the refusal of the Spokane, Portland and Seattle Railway Company, called the S.P. & S.; the Oregon Electric Railway Company, called the Oregon Electric; and the Oregon Trunk Railway, called the Oregon Trunk, generally referred to collectively as the S.P. & S., except where otherwise indicated, and the other defendants, sometimes referred to as connections, to establish and maintain competitive through routes and joint through rates and charges[1] applicable to freight traffic of whatsoever nature moving between points on the S.P. & S., on the one hand, and points throughout the United States generally east of Spokane, Wash., and Canada and Mexico, on the

[1] Rates and charges, and differences therein, are in amounts per 100 pounds, and are those in effect on May 1, 1954.

other, in connection with the complainant through Spokane, referred to as the Spokane gateway, results in violations of sections 1(4), 3(1), and 3(4) of the Interstate Commerce Act, and deprives the public and the complainant of the use of available and reasonable through routes and reasonable and nondiscriminatory through rates which are necessary and desirable in the public interest.

[fol. 132] The complainant asks us to require the defendants to establish through routes and joint rates via Spokane in connection with the complainant and its connections, applicable to freight traffic generally, together with all terminal services, allowances, transit, and other privileges including diversion and reconsignment, in connection therewith, where such do not already exist via the aforementioned gateway in connection with the complainant, on the same basis as may now or hereafter be available from and to S.P. & S. points over routes through the Spokane gateway in connection with the Great Northern Railway Company and the Northern Pacific Railway Company, sometimes referred to collectively as the northern lines and separately as the Great Northern and the Northern Pacific, respectively, and their connections.[2] The complainant also asks us to determine and prescribe just, reasonable, equitable, nonpreferential, and nonprejudicial divisions of the joint rates and charges sought, in the event the defendants fail and refuse voluntarily to establish such divisions.

No evidence was submitted with respect to rates from or to Mexico, and such rates will not be considered.

The complainant asserts, in substance, that the purpose of the complaint is to preserve to its railroad the opportunity of at least soliciting traffic in which it feels it is entitled lawfully to share and to open up territory over its line now closed to shippers of commodities to and from the Pacific Northwest, and thereby to increase its revenues. It seeks the establishment of joint through rates from and to

---

[2] Appendix A hereto shows the territorial application of joint through rates via Spokane, on various commodities and classes of traffic in connection with the S.P. & S., and the Northern lines. Appendix B shows the same in connection with the S.P. & S. and the Milwaukee.

points served exclusively by it, as well as common points, and points reached by connecting lines.

[fol. 133] Interveners in support of the complaint include the Secretary of Agriculture, the West Forest Industries Association, the National Livestock Producers Association, the Chicago Producers Association, the American National Cattlemen's Association, the National Wool Growers Association, and the Traffic Bureau of Sioux Falls, S. Dak. The only interveners in opposition to the complaint are the Great Northern and the Northern Pacific, each of which owns 50 percent of the capital stock and bonds of the S.P. & S., and the operating and nonoperating labor organizations of those carriers. The Idaho Public Utilities Commission, the Public Utilities Commissioner of Oregon, and the Public Utilities Commission of South Dakota, intervened, but offered no evidence and took no position[3] respecting the issues involved.

Motions.—Before proceeding to a discussion of the issues and the evidence relating thereto, it is necessary to consider certain motions made by the parties. The S.P. & S. lines were the only defendants named in the original complaint. The amended complaint, filed after the initial hearing at which evidence in support of the complainant was adduced, named 405 additional defendants, some[4] of which have par- [fol. 134] ticipated actively in this proceeding. Collectively, these participants are called the W.T.L. lines. The record made at the initial hearing was allowed to stand subject

[3] By letter dated October 18, 1955, addressed to us, the Public Utilities Commissioner of Oregon advised that he would support any decision which may alleviate the annual car shortages in that State, and which would afford additional transportation services and transit privileges for Oregon shippers. Under date of October 15, 1955, the Idaho Public Utilities Commission withdrew from the case.

[4] The Chicago and North Western Railway Company, called the North Western, and its subsidiary, the Chicago, St. Paul, Minneapolis and Omaha Railway Company; The Chicago, Burlington & Quincy Railroad Company, called the Burlington; The Minneapolis & St. Louis Railway Company; and the Chicago, Rock Island and Pacific Railroad Company, called the Rock Island, and its subsidiary, the Peoria Terminal Company.

to the right of the defendants and supporting interveners to cross-examine further the witnesses who had testified at that hearing. With one exception, those whom the adverse parties desired to cross-examine further were made available for this purpose at subsequent hearings. The exception was witness Hemphill whose testimony relates to rates on lumber from Eugene, Oreg., to destinations east of Spokane. Because it was not possible to cross-examine this witness further, the defendants, on brief, move that his testimony be stricken. The complainant is willing that this testimony not be considered. The motion is sustained.

As stated, the complaint contains an allegation that section 3(1) of the act has been violated. Prior to the initial hearing, the S.P. & S. filed a motion to strike that allegation from the complaint. The motion was made on the ground that a complainant railroad cannot raise in its own behalf an issue under section 3(1) against another railroad. The motion was overruled by order dated July 20, 1954. After the amended complaint was filed the initial defendants and interveners, as well as the newly-added defendants, again moved to strike therefrom the section 3(1) allegation, or in the alternative to make the allegation more definite and certain. These motions were overruled by order dated November 5, 1954. On brief, the defendants renew their motions to strike that allegation from the complaint, and they also move to strike all evidence received, objected to when offered, which would be relevant to that issue if properly before us.

[fol. 135] In *Denver & R.G.W.R. Co.* v. *Union Pac. R. Co.*, 287 I.C.C. 611, 619, hereafter referred to as the *Rio Grande* case, in dealing with a similar question, we said:

> We agree that complainant, a railroad, could not raise, in its own behalf, an issue under section 3(1) against another railroad. Intervening shippers, however, have raised such an issue. Testimony, pro and con, was received on this issue and we think it has been fairly tendered here for decision.

A conclusion similar to the above was reached by us in *American Barge Line Co.* v. *Alabama, G.S.R. Co.*, 296 I.C.C. 247, 266. In view of the foregoing, the previous denial of

defendants' motions to strike the allegation of section 3(1) of the act from the complaint is affirmed, and the motions to strike the evidence relating to that issue are overruled.

Exhibits 112 and 113 of record, introduced by the railroad interveners in support of the defendants, contain lists of individual lumber mills and the capacity of each located at points in Washington, Oregon, Idaho, and Montana. Objection by the complainant to the receipt in evidence of these exhibits, upon the ground that the contents of the exhibits are not relevant to the issues in this proceeding since most of the mills shown are not located in S.P. & S. territory, was overruled by the examiner and the exhibits were received in evidence. On brief, the complainant renews its objection and seeks to have these exhibits and all testimony relating thereto stricken from the record. It is apparent that any evidence relating to the supply of lumber available to shippers and receivers from any source in the Pacific Northwest is relevant to the issues raised in this proceeding. The objection is overruled.

[fol. 136] *Routes.*—Routes are available to and from points on the S.P. & S., via Spokane, in connection with the complainant and its eastern connections, but generally shippers would have to pay combination rates if such routes were used. The maintenance of those rates produces higher charges than those resulting from the joint rates maintained by the S.P. & S. over routes via Spokane in connection with the northern lines. The higher rates and charges act as deterrents to shippers and, in effect, close the Spokane gateway in a commercial sense insofar as the complainant is concerned. We are asked to require the establishment, through that gateway in connection with the complainant, of through routes and joint rates and charges which would remove the alleged unlawfulness.

The power to require the defendants to establish the through routes and joint rates sought is limited by section 15(4) of the act, which provides that, except as provided in section 3 of the act, and except where one of the carriers is a water line, we may not require a railroad, without its consent, to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common man-

agement or control therewith, which lies between the termini of such proposed through route, (a) unless such inclusion of lines would make the through route unreasonably long as compared with another practicable through route which could otherwise be established, or (b) unless we find that the through route proposed is needed in order to provide adequate, and more efficient or more economic, transportation. The foregoing provisions are subject to [fol. 137] the further proviso that in prescribing through routes, we shall, so far as is consistent with the public interest, and subject to the foregoing limitations in clause (a) and (b), give reasonable preference to the carrier by railroad which originates the traffic. This section also provides that no through route and joint rates applicable thereto shall be required by us for the purpose of assisting any carrier that would participate therein to meet its financial needs.

The defendants contend that as the principal stated objective of the complainant in filing the complaint was to increase its revenues, we should dismiss the complaint, on that ground alone, in view of the provision of section 15(4) referred to above. As the complainant has not sought to support the complaint on the basis of its revenue needs, this contention is without merit. In reaching our conclusions herein, no consideration has been given to the financial needs of the complainant.

Certain interveners in support of the complaint contend that because the routes over which joint rates are sought are open to traffic at combination rates, and, as previously shown, in certain instances, at joint through rates, we are not called upon to require the establishment of through routes, and that thus the limitations upon our power to do so in section 15(4) of the act are not applicable and need not be considered. They insist that our principal task here is to determine whether the through rates resulting from the presently-applicable combination rates over such through routes are in violation of sections 1 and 3 of the act as alleged. The complainant and supporting interveners [fol. 138] argue that there is public need for joint rates via the Spokane gateway, in connection with the S.P. & S. and the complainant, equal to the joint rates now maintained

via that gateway over the competitive routes composed of the S.P. & S. and the northern lines.

The first question for determination, therefore, is whether or not the present routes via the Spokane gateway composed of the lines of the S.P. & S. and the complainant constitute "through routes" as that term is used in section 15(3) and (4) of the act. As above stated and as testified by numerous shippers in this proceeding, the Spokane-gateway routes, insofar as the complainant's lines are concerned, with the exceptions listed in appendix B,[5] are not considered as open or through routes commercially, but as routes that are effectually closed to shippers because of the higher combination rates which apply thereover. A finding that such routes should be opened to shippers on a commercial basis by establishing the competitive joint rates sought would result in the establishment of such routes as effective through routes.

In the *Rio Grande* case, a proceeding involving the question, among others, whether or not through rates existed via Odgen, Utah, in connection with the Denver & Rio Grande Western Railroad Company and the Union Pacific Railroad Company under circumstances somewhat similar to those herein considered, we said, at page 616:

> [fol. 139] In *Thompson* v. *United States*, 343 U. S. 549, decided June 2, 1952, the Supreme Court considered the question of the content of the term "through route" as used in the act, upon an appeal from a decision of a lower court sustaining our order in *Omaha Grain Exc. of Omaha, Nebr.* v. *Missouri Pac. R. Co.*, 278 I.C.C. 519. Therein, we had affirmed a prior finding of division 2 that a through route on grain from points on the Central branch of the Missouri Pacific Railroad Company in Kansas, Concordia and west thereof (Lenora, Kans., was used as a typical origin), to Omaha, Nebr., and Council Bluffs, Iowa, in connection with the line

[5] Since the date of the original hearing, June 1954, rates from and to additional points have been approved by the S.P. & S. on forest products via Spokane in connection with the S.P. & S. and the Milwaukee. As a result thereof, there has been published or approved a full line of joint through rates on those products from all points on the S.P. & S. to all local points and some common points on the lines of the Milwaukee east of Spokane.

of the Chicago, Burlington & Quincy Railroad Company beyond Concordia, was already in existence and therefore did not have to be established preliminary to the exercise of our power to prescribe reasonable rates under sections 1 and 15(1) of the act. The Court held:

> In short, the test of the existence of a "through route" is whether the participating carriers hold themselves out as offering through transportation service. Through carriage implies the existence of a through route whatever the form of the rates charged for the through service.
>
> In this case there is no evidence that any through transportation service has ever been offered from Lenora to Omaha via the Burlington. The carriers' course of business negatives the existence of any such through route. * * * Through service to points short of Omaha cannot be used as evidence of the existence of a through route to Omaha * * *. Since there is admittedly no evidence that the Missouri Pacific ever offered through transportation service over the route in question, the Commission's order is without evidentiary support under the accepted tests for determining the existence of a through route.

The Court cited with approval *Beaman Elevator Co.* v. *Chicago & N. W. Ry. Co.*, 155 I.C.C. 313, wherein the Commission held that proof of one shipment on a through bill of lading over a particular route was not sufficient to show the existence of a through route, because, as stated by the Court, "that one shipment was not representative of the carrier's course of business." It thus becomes necessary to determine whether the carriers in this proceeding "hold themselves out as offering through transportation service" from and to the points here concerned via the Ogden gateway as indicated by their "course of business" in respect of traffic over the routes in question.

[fol. 140] In the above-cited proceeding the evidence showed that in a representative year 55 carload ship-

ments of various commodities moved via Ogden on through bills of lading in connection with the Rio Grande and the Union Pacific, as compared with many thousands in the same year, from and to the same points, at joint rates over the Union Pacific routes. There was no indication that any of the defendants therein had ever solicited any traffic for routing over a Rio Grande route via Ogden by which a higher combination rate applied, or had ever used such a Rio Grande route except where called upon to do so by routing specified by the shipper or by a prior connecting carrier. In finding that there were no through routes, as that term is used in the act, over the Rio Grande via Ogden on the traffic involved therein, and that any order requiring the establishment of such routes, and joint rates over them, must be grounded upon findings, as specified in section 15, that the routes are necessary or desirable in the public interest, and are needed to provide adequate, and more efficient or more economic, transportation, it was stated that so far as the record therein showed "the carriers' course of business" was to use the Union Pacific routes except where specifically called upon to use the Rio Grande routes, and that the shipments mentioned which moved over the Rio Grande routes must be regarded as of an isolated nature and as falling in the same category as the shipments held insufficient to show the existence of a through route in *Beaman Elevator Co.* v. *Chicago & N. W. Ry. Co., supra,* cited with approval by the Supreme Court in *Thompson* v. *United States, supra.*

[fol. 141] The Supreme Court in *Denver & R. G. W. R. Co.* v. *Union Pac. R. Co.*, 351 U. S. 321, in reversing the judgment of one lower court which had upset our order in the *Rio Grande* case, and affirming the judgment of another lower court insofar as it affirmed our order in that case, stated in pertinent part, as follows:

> We adhere to the "holding out" test of the *Thompson* case. The evidence before the Commission was not such as to compel it to find that the Union Pacific held itself out as offering through service over the Rio Grande lines.

In the instant proceeding, the evidence shows that during 1952, which may be accepted as a representative year, 493 carload shipments were made, on through bills of lading, from origins on the S. P. & S. via Spokane in connection with the S. P. & S. and the Milwaukee to destinations on the Milwaukee, and 4 carload shipments were made from S. P. & S. points via Spokane, over the lines of those carriers, to points on the Milwaukee's connections. The commodities shipped included gasoline and other petroleum products, livestock, forest products, and miscellaneous commodities.

During the same year, 16 carload shipments were made on through bills of lading, in connection with the S. P. & S. and the Milwaukee via Spokane, to destinations on the S. P. & S. Six of these shipments originated at points on the Milwaukee and the remainder at points on its connections. The shipments consisted of livestock, chemicals, motor vehicles, furniture, candy and confectionery, soap and cleaning and washing compounds. Thus, during the representative year 513 carload shipments, both eastbound and westbound, were interchanged at Spokane between the [fol. 142] S. P. & S. and the Milwaukee, as compared with many thousands in the same year interchanged there between the S. P. & S. and the northern lines at joint through rates.

The record indicates that the foregoing 513 shipments moved at joint through rates. There is no indication that any traffic has ever been solicited for routing via Spokane over a Milwaukee-S. P. & S. route by which a higher combination rate applied, or has ever moved over such a route. As pointed out, the joint through rates via Spokane in connection with the S. P. & S. and the Milwaukee apply primarily from and to local points on the lines of the latter. With the exception of the traffic referred to which moved on such rates, "the carriers' course of business" has been and is to use routes via Spokane composed of the S. P. & S. and the Great Northern or the S. P. & S. and the Northern Pacific. In 1952, the Milwaukee handled 6,384 carloads of freight which either originated or terminated on the lines of the S. P. & S., but, with the exception of the 513 shipments referred to, the interchanges were made at points east

of Spokane, mainly at Minneapolis, St. Paul, or Minnesota Transfer Minn., hereinafter called the Twin Cities.

In view of the foregoing, we find that, with the exceptions above mentioned, there are no through routes, as that term is used in the act, between the areas comprised in the complaint, in connection with the S. P. & S. system and the Milwaukee via Spokane.[6]

Physical location of the railroads concerned.—The eastern termini of the tracks of the S. P. & S. are at Marshall Junction, Wash., southwest of the Spokane city limits, [fol. 143] where it connects with the Northern Pacific, and at Fort Wright, Wash., west of said limits, where it connects with the Great Northern. The S. P. & S. operates trains over the separate tracks of these carriers to and from their respective freight and passenger terminals at Spokane under an agreement entered into in 1910. The agreement also provides that the northern lines will perform certain terminal services for the S. P. & S. at Spokane, including the transfer of cars to and from other lines. Any cars moving via Spokane between the S.P. & S. and the Milwaukee are switched by the Northern Pacific between its freight terminal and the Milwaukee interchange tracks.

From those eastern termini near Spokane, a line of the S.P. & S. extends southwesterly 369 miles, along the north bank of the Snake and Columbia Rivers, through the State of Washington to Vancouver, Wash., where it crosses the Columbia and Willamette Rivers and enters Portland, Oreg. Another line of the S.P. & S., called the Astoria line, extends from Portland northwesterly along the south bank of the lower Columbia River to the port of Astoria, Oreg., located at the mouth of that river, thence southerly along the Pacific coast to Seaside, Oreg., a total distance of about 118 miles. These are the main lines of the S.P. & S. There

---

[6] The complainant in its exceptions to the proposed report took no exception to the above finding as proposed therein, but in its reply to the exceptions filed by the defendants and supporting interveners, it argues that through routes already exist. On January 22, 1957, the defendants filed a motion to strike the aforesaid portion of the complainant's reply, to which the complainant replied. Obviously, this matter is in no sense a reply to any matter contained in the exceptions of the defendants and supporting intervenors. The motion is sustained.

is one S.P. & S. branch line in the State of Washington which extends northeasterly from Lyle through Klickitat to Goldendale, about 42 miles, and another short branch line in the State of Oregon which extends from United Junction, on the Astoria line, through Veronia to Keasey.

The line of the Oregon Trunk extends from Wishram, Wash., its junction with the S.P. & S., southerly along the [fol. 144] Deschutes River to Bend, Oreg. Its trackage is operated jointly with the Union Pacific. It has no branch lines. The Oregon Electric is located wholly within the State of Oregon. Its main line extends from Portland in a general southerly direction along the Willamette River to Eugene, about 143 miles. It has a branch line extending from Forest Grove Junction to Forest Grove, about 11 miles. Another branch line, known as the Santiam branch, extends along the Santiam River from Albany to Foster, about 32 miles, and a branch off that line, called the Sweet Home branch, extends from Sweet Home to Dollar, 16 miles. The lines of the S.P. & S. and its subsidiaries approximate 950 miles in length.

The Milwaukee, which owns and operates about 10,600 miles of railroad, serves the North Pacific coast ports on Puget Sound in the State of Washington, and its lines in western Washington extend south to Longview. It does not serve Portland or any other point in Oregon. Although it serves Spokane, the main line of its Pacific coast extension by-passes that point and extends eastwardly through Marengo, Wash., Plummer Junction, Idaho, Butte, Mont., Aberdeen, S. Dak., and the Twin Cities to Chicago, Ill. It also has a line which extends south and east of Chicago through Terre Haute, Ind., to Westport, Ind., where it connects with the New York Central Railroad Company. From Aberdeen it has a line extending southward through Mitchell and Yankton, S. Dak., which, together with other Milwaukee branch lines, serves points in Iowa and Nebraska, including Omaha. The Milwaukee also serve Kansas City, Mo. These lines provide routes between the Pacific Northwest, on the one hand, and the Southwest and East, [fol. 145] on the other, which do not require operation through the Twin Cities. The Milwaukee also has a network of secondary main and branch lines in South Dakota,

Iowa, Minnesota, and Wisconsin. It reaches the head of the Great Lakes over the rails of the Northern Pacific from St. Paul to Duluth, Minn., and Superior, Wis.

The Northern Pacific and the Great Northern each serves the North Pacific coast ports in Washington and also Portland. Each operates through the northern tier of States between the North Pacific coast on the west and the Twin Cities and head of the Great Lakes on the east. The Great Northern also serves eastern South Dakota and Sioux City, Iowa, and has operating rights over the S.P. & S. and Oregon Trunk which, in connection with its own lines south of Bend, enable this carrier to reach Bieber, Calif., where it connects with The Western Pacific Railroad Company. Between them the northern lines serve the larger cities in northern Idaho, Montana, North Dakota, South Dakota, and Minnesota, many of which are also served by the Milwaukee. Both northern lines connect with the Burlington at Laurel, Mont., where traffic is interchanged. Between the Pacific Northwest, on the one hand, and the Southeast, the Southwest, and western Iowa, on the other, the routes of the northern lines via Laurel and the Burlington are shorter than routes via the Twin Cities gateway.

Spokane is on the main transcontinental routes of the northern lines. Each of those lines has its own main-line route between Spokane and Portland, via Auburn, Wash., in the case of the Northern Pacific and via Everett, Wash., in [fol. 146] the case of the Great Northern. As indicated, a main line of the S.P. & S. extends from a point near Spokane to Portland.

The W. T. L. lines serve the Twin Cities area. As the Twin Cities gateway is the eastern terminus of the northern lines, each of the W. T. L. lines exchanges with those carriers at that gateway traffic that is destined to points east or west thereof. The W. T. L. lines and their connections, defendants herein, reach points throughout official, southern, and southwestern territories.

Carriers operated under common management or control. —The complainant contends that, as the extreme easterly terminus of the lines of the S.P. & S. system is Spokane, the establishment of the routes and joint through rates

sought via that point would not deprive those defendants of any portion of their line haul and that, therefore, the provisions of section 15(4) of the act are not here applicable. On the other hand, the S.P. & S. and the northern lines contend that the matters hereinafter stated show that the former are operated in conjunction and under common management or control with the latter, and that if the complainant herein prevails, the northern lines in conjunction with the S.P. & S. would be short-hauled without their consent, in contravention of the act.

Both the stock and the bonds of the S.P. & S. are owned in equal shares by the Great Northern and the Northern Pacific. The Oregon Electric and the Oregon Trunk are wholly owned by the S.P. & S., except for qualifying shares of the latter's stock. The outstanding securities of the S.P. & S. consist of stock of the par value of $40,000,000, issued in 1910 and 1911, and 4 percent bonds, due in 1961, of the face value of $73,710,000. Neither the Oregon Elec- [fol. 147] tric nor the Oregon Trunk has any outstanding bonds. The former had some outstanding bonds owned by the S.P. & S. prior to March 31, 1953, but on that date they were canceled.

The investment of the S.P. & S. in road and equipment as of December 31, 1954, was $139,170,506, and the gross capital expenditures up to that date, without deduction for retirements, was $168,181,108. The sources of these gross expenditures were $76,403,278 from the Great Northern and Northern Pacific ($38,201,639 each); outside capital (equipment obligations) $9,310,672, and the S.P. & S. from operations; $82,467,158. Most of the latter investment in road and equipment was made possible because the northern lines had not pressed for the payment of interest in default on the outstanding bonds of the S.P. & S. From 1926 to 1952, inclusive, the accrued and unpaid bond interest aggregated $79,465,638, and as of December 31, 1952, the northern lines canceled this amount in its entirety.

In addition to the cancellation of accrued interest on bonds, the northern lines have assisted the S.P. & S. financially in other ways. Over the years they made loans to it aggregating $13,708,310, which have been repaid in full. In 1938, for example, they advanced $550,000 to that car-

rier to enable it to pay taxes. The northern lines assert that such transactions show that the S.P. & S. has been dependent upon them from a financial standpoint, and that they in effect act as bankers for it.

The S.P. & S. has never paid any dividends on the par value of its capital stock of $40,000,000 owned by the north- [fol. 148] ern lines. At an annual rate of 4 percent the dividends, if paid, would have amounted to $1,600,000 a year, which from 1910 to 1955 would have aggregated $72,000,000. Considering that item, the bond interest canceled, and the advances previously mentioned, it appears that it has cost the northern lines approximately $218,000,000 to keep the S.P. & S. in operation since 1910.

The S.P. & S. is dependent, to a substantial extent, upon the northern lines for car supply. The S.P. & S. defendants own 2,063 box cars, which are not sufficient for their needs. They order freight cars directly from the northern lines, each of which assumes the responsibility for furnishing half of the extra cars required by the S.P. & S.

From the beginning of the operation of the S.P. & S. in 1909 to the present time the management thereof has passed through three phases, the first of which extended to 1932. In that period the S.P. & S. had a separate president under whom there was a complete administrative organization at Portland, which functioned, at least from 1913, under direction of the northern lines. The instructions by the officials of the northern lines to the officials of the S.P. & S. covered everything from capital expenditures, including expansion projects, to traffic and operating matters. Instructions were sometimes sent to the officials of the S.P. & S. without any prior consultation with those officials.

The second management phase of the S.P. & S. extended from 1933 to 1940. In that period the positions of president and vice president of the S.P. & S. were alternated each year between the presidents of the northern lines, so that [fol. 149] in one year the president of the Great Northern was president of the S.P. & S. and the president of the Northern Pacific was vice president, and in the following year the latter became the president and the former the vice president of the S.P. & S. During that period there

was a superintendent in charge of S.P. & S. operations, but each department head of the S.P. & S. each year reported to, and received instructions from, the corresponding department of the northern line whose president was also the president of the S.P. & S. for that year. There was then no official of the S.P. & S. in Portland in over-all charge of S.P. & S. operations.

The third management phase of the S.P. & S. extends from 1940 to the present time. In that year the individual who had been superintendent at Portland in immediate charge of the S.P. & S. operating department was given the title of vice president, but the presidency and the system vice presidency were still held, as they are today, by the northern-line presidents who, as formerly, alternate each year in those positions. All questions which go to the northern lines from S.P. & S. departments are usually routed through the latter's vice president in Portland, but he does not act on any matter of importance without the authority or approval of the two presidents of the northern lines.

The S.P. & S. defendants observe corporate formalities by formal elections of the boards and officers thereof, but that action is taken only in accordance with specific directions of the northern lines as to the personnel of the boards and officers. The boards of those defendants are composed of the two northern lines' presidents, the two northern lines' vice presidents in Seattle, and the S.P. & S. [fol. 150] general counsel. The boards take no action other than to elect officers or, upon the direction of the northern lines, to adopt a resolution to support corporate action such as the filing of an application with this Commission. The executive committee of the S.P. & S., established in 1940, consists of the two presidents of the northern lines, with the two Seattle vice presidents designated as alternate members. It has never met formally, except once a year to ratify the execution of S.P. & S. documents which in that year had been executed by the northern lines' executives in their capacities as officers of the S.P. & S.

Some matters relating to the S.P. & S. are handled by the executive departments of the northern lines. Such matters are first brought to the attention of the two vice

presidents in the executive departments and many are disposed of after discussions between them without submission to the presidents, and letters are sent out announcing the conclusions in the name of the president of the S.P. & S. The more important matters are referred to the two presidents for their disposition. Although in each year one northern-line president is the president of the S.P. & S. and the other is vice president, there is no difference in the authority exercised by each except in the title used in signing documents.

As to the control of traffic practices and policies of the S.P. & S. by the northern lines, the evidence shows that there is no essential difference in the control exercised by the latter over such matters as distinguished from non-traffic matters. Although the freight traffic practices and policies of the S.P. & S. are directed and controlled jointly [fol. 151] by the traffic departments of the northern lines, the local officials of the S.P. & S. are authorized to act within the framework of policies determined by the northern lines without specific approval from the traffic departments of the latter on each question which arises.

Matters relating to S.P. & S. rates fall into these general categories: Rates and practices relating to S.P. & S. local territory, rates and practices on traffic other than transcontinental traffic, and rates and practices relating to transcontinental traffic. As to the first category, the S.P. & S. with minor exceptions, is permitted, without specific approval in advance, to place such matters on the North Pacific Coast Freight Bureau docket to be handled in the regular course. Rates which fall in the second category are not placed by the S.P. & S. on that docket without approval in advance by the northern lines. If a proposal in that category is opposed by representatives of both northern lines, the S.P. & S. follows the lead of the representatives of those lines. There are instances, however, where the representatives of the northern lines are not in agreement on a proposal. In such cases the S.P. & S., in accordance with the practice approved by the northern lines, is permitted to exercise its best judgment in voting. In the third category, which relates to transcontinental traffic, all matters pertaining thereto are handled for the S.P. & S.

by the representatives of the northern lines at the Transcontinental Freight Bureau meetings.

The S.P. & S. has no off-line representatives soliciting traffic. All off-line solicitation is handled by representatives of the northern lines. All agents of the northern lines [fol. 152] are direct agents of the S.P. & S. The latter has solicitors in its local territory who solicit traffic for movement over the northern lines, and they make no distinction between the two in their solicitation efforts. The choice as between the northern lines is left entirely to the shipper or consignee without any effort by the S.P. & S. to influence the choice. As each of the northern lines has competitive routes over its own rails as far as Portland to and from a major portion of the S.P. & S. territory and to and from California beyond the S.P. & S., it is apparent that the northern lines have, through their own traffic solicitors, the power of life and death over the S.P. & S.

In the light of the foregoing, the S.P. & S. and the northern lines urge that the traffic policy of the former is controlled by the latter. They refer to *Blackshear Mfg. Co.* v. *A. C. L. R.R. Co.*, 87 I.C.C. 654, decided in 1924, called the *Blackshear* case, regarded as a leading case on the question of what constitutes common management or control for the purpose of determining whether joint-line or single-line rates should be applied. Therein two distance scales of rates were prescribed. One was a single-line scale for application over a single line of railway "or over two or more lines under the same general management and control", and the other a joint-line scale which applied "only when the lines embraced in the route are not under common ownership or control." In explaining the phraseology thus used, the Commission stated, at page 664:

> It should be understood that where the term "carriers under the same management and control" is used in this report, it refers to carriers generally controlled through ownership, lease, or otherwise to the extent of controlling traffic policy, even though separate corporate entity may be maintained.

[fol. 153] See also *Humbard Construction Co.* v. *Southern Ry. Co.*, 161 I.C.C. 38, to the same effect.

In seven separate proceedings, three of which were prior to the *Blackshear case* and four thereafter, this Commission commented that the S.P. & S. must be regarded, for rate-making purposes, as a part of the Great Northern and Northern Pacific systems rather than as an independent line. The first of these proceedings was *Portland Chamber of Commerce* v. *O.R.R. & N. Co.*, 19 I.C.C. 265, decided in 1910, in which the following appears, at page 283:

> * * * It (the S.P. & S.) was built by the Great Northern and Northern Pacific jointly for the purpose of relieving congestion, avoiding double tracking over the Cascade Mountains, and furnishing a road of low grades from western Washington to tidewater on the Pacific Coast. * * * So far as these proceedings are concerned, we believe the road must properly be considered a part of the Northern Pacific and Great Northern systems rather than as an independent line. It is used by the Great Northern and Northern Pacific in the transportation of all business between coast and interior points which can be handled more cheaply over it than over the existing lines of the Great Northern or Northern Pacific.

In every proceeding wherein the question arose since 1910 and as late as 1952, in *Helix Milling Co., Inc.* v. *Great Northern Ry. Co.*, 287 I.C.C. 77, we have adhered to the foregoing pronouncement, namely, that the S.P. & S., for rate-making purposes, must be treated as a part of the systems of the northern lines rather than as an independent line.

The definition in the *Blackshear* case as to what constitutes "common management or control" in determining whether single-line or joint-line rate scales shall be prescribed has been applied also in interpreting this phrase as contained in section 15(4) of the act in proceedings concerning discrimination and undue prejudice under section 3(4) of the act, as well as the question of short-hauling. [fol. 154] In *Seaboard Air Line Ry. Recs.* v. *Carolina & N. W. Ry. Co.*, 204 I.C.C. 416, we stated, at page 420:

> All of the outstanding bonds of the Carolina and Northwestern are owned by the Southern. * * * The

> Southern has the equitable title to and control of all of the preferred stock and about 99 percent of the common stock of the Carolina & Northwestern. The president of the Southern is also president of the Carolina & Northwestern. The comptrollers and treasurers of both carriers are the same. * * * The officials of the Carolina & Northwestern determine the policy to be adopted with regard to traffic matters local to that carrier, but in matters of common interest between the Southern and the Carolina & Northwestern the policy determined by the Southern prevails. It is apparent, therefore, that both carriers are operated under a common management and control.

Accordingly, it was concluded that the refusal of the Carolina & Northwestern to participate with the Seaboard Air Line in joint rates the same as those in which it participated with the Southern was not discriminatory or unduly prejudicial under section 3(3) (now section 3(4)) of the act. See also *Georgia & F. R.* v. *Atlantic Coast Line R. Co.*, 191 I.C.C. 489.

[fol. 155] The definition in the *Blackshear* case was quoted with approval in *Ala., Tenn. & Nor. R. Corp.* v. *Southern Ry. Co.*, 148 I.C.C. 708, wherein it was held that the Southern, The Cincinnati, New Orleans and Texas Pacific Railway Company, and The Alabama Great Southern Railroad Company were under common management and control within the meaning of section 15(4) of the act, and that the latter two carriers could not be required to establish a route with the complainant therein which would short-haul the Southern. See also *Port of New York Authority* v. *A. T. & S. F. Ry. Co.*, 144 I.C.C. 514, 519, and *Western Pac. R. Co.* v. *Northwestern Pac. R. Co.*, 191 I.C.C. 127, called the *Western Pacific* case.

The complainant refers to a number of tariffs containing miscellaneous local distance scales of rates applicable from and to territory served by the S. P.&S. defendants, and shows that in the application of none of those scales is the rate for the combined hauls on the S.P.&S. and the Great Northern or the S.P.&S. and the Northern Pacific arrived at on a through distance basis, but on the contrary,

in each case, a combination of local rates of each carrier is the legally applicable charge. The mere voluntary publication of isolated distance scales of rates in this manner does not prove that the S.P.&S. and the Great Northern or the S.P.&S. and the Northern Pacific should not be treated as single lines for rate-making purposes. The proceedings above mentioned show that they have been treated as such by this Commission. In *Caron & Campbell v. Director General*, 57 I.C.C. 474, the action of the Missouri Pacific Railroad Company in applying combination rates over different portions of its own system was not condemned.

The same tariffs which provide for the application of the combination rates between the S.P.&S. and each of [fol. 156] the northern lines also provide for the application of similar combinations for movements between different segments of the S.P.&S. system itself; that is, between points on the Oregon Electric and points on the S.P.&S., and between points on the Oregon Trunk and points on the S.P.&S. There is no contention that the S.P.&S. system defendants are not under common management or control.

As to the important moving commodities herein, such as lumber eastbound, and grain and manufactured articles westbound, there are no combination rates between the S.P.&S. and either of the northern lines. It is true, as pointed out by the complainant, that in dividing the revenues under the joint rates on such commodities the S.P.&S. receives divisions separate from the divisions received by the northern lines. The record shows that the Oregon Electric and the Oregon Trunk also receive divisions separate from the S.P.&S.

The fact that the S.P.&S. has always had a separate vote and separate status from the northern lines on committees of the North Pacific Coast Freight Bureau is stressed by the complainant as indicating that the S.P.&S. defendants and the northern lines are not operated under common management or control. It is provided in the articles of organization and procedure of the Bureau, which are incorporated in the western traffic agreement, approved by us under section 5(a) of the act on December 15, 1949, that

where two or more carriers are under common management or control such carriers shall be considered as one member and have one vote. The record shows that from its organization, in 1920, until the adoption of the western traffic agreement, the by-laws of the Bureau contained no provision relating to the voting powers of carriers under [fol. 157] common management or control. On the assumption that the S.P.&S. has not had the right to vote since the adoption of that agreement, action has been taken by the northern lines to secure an amendment to the rule concerned so as to permit the S.P.&S. to vote. In the light of the evidence of record pertaining to the question of common management or control, heretofore discussed, this matter is not determinative of the issue raised in connection therewith.

The complainant further contends that the S.P.&S. cannot be regarded as under common management or control with the Great Northern, in considering traffic as to which the Great Northern has the long haul in conjunction with the S.P.&S., and at the same time under common management or control with the Northern Pacific, in considering traffic as to which that carrier has the long haul in conjunction with the S.P.&S. It is conceded by the complainant that the northern lines, through the executive committee of the S.P.&S., can exercise control of the latter, but it contends that as the northern lines themselves are not under common management they cannot qualify for exemption from short-hauling under the provisions of section 15(4) of the act.

Among the many cases wherein this Commission has commented upon the status of the S.P.&S. is *Inland Empire Shippers League* v. *Director General*, 59 I.C.C. 321. Therein it was stated, at page 341:

> • • • The Spokane, Portland & Seattle is controlled jointly by the Great Northern and the Northern Pacific, and the vice-president of the Northern Pacific testified that it is used by these companies as they would use their own lines.

[fol. 158] Numerous cases support the view that a railroad can be considered the instrumentality of its competi-

tive carrier owners so that the former is under the common control of each. In *Bass Market Co.* v. *Northwestern Pac. R. Co.*, 171 I.C.C. 117, it was stated that the Northwestern Pacific was built, and is owned and operated, by the two systems named (the Southern Pacific and the Santa Fe), and for all rate making purposes must be considered as part thereof. In *Des Moines Union Ry. Switching*, 231 I.C.C. 631, 637, the statement appears that it was the purpose of the proprietary companies from the beginning to construct and operate but one facility, instead of each building and maintaining its own facilities, and to construct and use those facilities in common so that each might have the benefit of them as fully as though it were the sole owner. In *Louisville & N.R. Co.* v. *United States*, 242 U.S. 60, the Supreme Court had under consideration the question of whether the Louisville and Nashville Railroad Company and The Nashville, Chattanooga & St. Louis Railway through their joint ownership of the Nashville Terminals were discriminating against the Tennessee Central Railway Company by requiring their joint agency to perform switching for each of them while refusing to permit it to switch for other lines. The Court said, beginning at page 72:

> If the intent of the parties or the purpose of the arrangement was material in a case like this, obviously there was none to discriminate against the Tennessee Central Road. That road did not enter Nashville when the plan was formed, and the two appellants had a common interest, although competitors,—an interest that was also public and in which the city of Nashville shared. * * * if either carrier owned and used this terminal above, it could not be found to discriminate against the Tennessee Central by merely refusing to switch for it, that is, to move a car to or from a final or starting point from or to a point of interchange. We conceive that what is true of one owner would be equally true of two joint owners.

[fol. 159] The record in the instant case points to a like conclusion; that is, that the common interest in the S.P.&S. of the Great Northern and the Northern Pacific, although

competitors, is such that they jointly manage and control the S.P.&S. One fact stands out in this proceeding, namely, that it has always been the policy of the northern lines to preserve to themselves the long hauls of traffic originating or terminating on the S.P.&S. There is nothing of record to indicate that they have ever disagreed as to this. The considerations which led the northern lines into that policy determination are immaterial so long as the S.P.&S. has no choice except to follow directions. See *Seaboard Air Line Ry. Recs.* v. *Northwestern Ry. Co.*, *supra*.

We find that the S.P.&S. system lines are operated in conjunction with and under a common management and control with the northern lines, as that term is used in section 15(4) of the act. We further find that the S.P.&S. is not unlawfully discriminating in its rates and charges between the northern lines and the Milwaukee.

It follows that any order requiring the establishment of routes in connection with the Milwaukee and the S.P.&S. via Spokane, and joint rates thereover, must be grounded upon findings, as specified in section 15, that the routes sought are necessary or desirable in the public interest, and are needed in order to provide adequate, and more efficient or more economic, transportation. Thus, the remaining issue in this proceeding is whether the Spokane gateway should be made available to shippers for routing, at joint rates and charges equal to those over competitive [fol. 160] routes, of all traffic moving between points on the lines of the S.P.&S., on the one hand, and points generally east of Spokane, on the other, in connection with the Milwaukee. That issue falls within the limitations of section 15(3) and (4).

Evidence in behalf of the complainant.—Complete track connections and interchange facilities between the complainant and the S.P.&S. have long been installed and in actual use at Spokane, and joint through rates and agreed divisions of such rates between these carriers have long been in effect via that gateway. As above mentioned, certain tracks of the northern lines are used in the interchange operations there. Freight traffic moving under such rates has been interchanged at Spokane for a number of years between these carriers, but only to the limited extent above

indicated. All such traffic must either originate or terminate on the lines of the complainant, and no joint through rates apply via Spokane on traffic to or from the complainant's connections, with the single exception of export and import rates referred to in appendix B. Mainly combination rates apply which are on a substantially higher level than the unrestricted joint through rates applicable via Spokane on all freight traffic there interchanged between the S.P.&S. and the northern lines. As stated, the record fails to disclose that any shipments have moved at combination rates.

Because of the above situation, the complainant is restricted in its participation in freight traffic, either originating at or destined to points on the S.P.&S., except as described above, to the handling of such traffic between junctions of the complainant with the northern lines and [fol. 161] their connections at points on and east of the Missouri River, and also at some points in Montana and points east and south thereof, called eastern gateways, the principal one of which is at the Twin Cities.

The Milwaukee does not seek the establishment of joint rates from or to Spokane proper in connection with the S.P.&S., as an origin or destination line, as shipments to or from industries thereon are handled in switching service with the northern lines.

At the time of the complainant's extension to the Pacific Coast, in 1909, and until recent years, the State of Washington was the center of lumber production in the Pacific Northwest. With large timber resources adjacent to its line, the complainant was able to handle all the timber consumed in its areas and to provide through routes for it, not only to local points on its line but also to points on its eastern connections. With the depletion of timber in Washington, the principal source thereof shifted to Oregon. The absence of joint through rates on lumber and forest products from S.P.&S. points in Oregon to points on the complainant's connections restricts shipments into the territory of the complainant, largely because of the lack of diversion privileges. Frequently lumber shipments are diverted in transit. A shipment destined to a point on the complainant's line, if diverted to a point on another line, would be

subject to higher charges than if the joint through rates sought were in effect.

The complainant asserts that it has been at a further disadvantage respecting traffic to or from noncompetitive points on its lines west of the Missouri River for the reason that in some instances shippers, in order to obtain [fol. 162] the lowest combination of local rates, must route their traffic via the nearest junction of either of the northern lines, thereby depriving the complainant of a substantial line haul. As to westbound traffic, which originates on the Milwaukee and its connections east of the Twin Cities and destined to points on the S.P.&S., the Milwaukee, because of the existing rate situation, must give that traffic to the Great Northern or the Northern Pacific at the Twin Cities. These carriers obtain a haul thereon of almost 1,500 miles before delivering it to the S.P.&S. at Spokane. The Milwaukee wants to be in a position to solicit this traffic for the haul over its line from the Twin Cities to Spokane, as well as eastbound traffic from Spokane.

As previously mentioned, the Milwaukee, during 1952, handled 6,384 carloads of freight which either originated or terminated on the lines of the S.P.&S., and only 513 of those cars were interchanged at Spokane between the Milwaukee and the S.P.&S. The Milwaukee received $850,416.46 in revenue for its participation in the handling of this traffic. If all these cars had been interchanged at Spokane between the S.P.&S. and the Milwaukee, it is estimated that the latter would have received total revenue therefrom of $3,382,755.21, or an increase of $2,532,338.75. These estimates are made, the complainant asserts, to show that there is a substantial amount of revenue from traffic that it does not have the opportunity of soliciting because of the existing rate situation at Spokane. The complainant emphasizes that it does not seek exclusive joint through rates restricted to its line between eastern [fol. 163] gateways and points east thereof on any traffic originating or terminating on the S.P.&S. and interchanged at Spokane.

The record shows that traffic which originates on the Milwaukee at points west of the Twin Cities destined to points east thereof is interchanged in substantial quanti-

ties with W.T.L. lines at that transfer point even in instances where the Milwaukee could possibly carry the traffic through to destination. In 1953, for example, 16,574 cars of lumber and forest products were brought to the Twin Cities by the Milwaukee. Based on studies made for four months of that year, it is estimated by the complainant that 4,503, or about 27 percent, of those cars were interchanged with four W.T.L. lines which actively participated in this proceeding.

There are at present joint through rates on various commodities and classes of traffic between points on the Milwaukee and connections and the Union Pacific and its connection in Oregon and Washington, and also between points on the former and connections and points on the Southern Pacific in Oregon, including Eugene and Salem, which are also reached by the Oregon Electric, but the rates on lumber eastbound do not apply to points on connecting lines south of a line extending from Chicago to Omaha, and the rates on other traffic both eastbound and westbound are restricted, with the exception of transcontinental export and import rates and as to westbound traffic moving over the Milwaukee in connection with the Union Pacific and the Southern Pacific via Marengo. These carriers do not permit milling or other transit privileges on lumber and related articles at points on their lines in connection with movements via Marengo and the Mil- [fol. 164] waukee. Also, the lumber rates via western junctions from Union Pacific and Southern Pacific origins to points in official territory are restricted to across-lake routes north of Chicago. With minor exceptions, the Milwaukee is without eastbound rates via western junctions from Portland and other points on the Union Pacific or its connections to destinations generally in Nebraska, southern Iowa, southern Illinois, and south thereof, and also to southern territory. An insignificant volume of traffic is interchanged at Marengo for movement to official territory over across-lake routes.

There are no physical difficulties in connection with the interchange of traffic moving in either direction between the Milwaukee and the S.P.&S. at Spokane. Cars from the S.P.&S. to the Milwaukee move with Northern Pacific cars

to the Milwaukee at the Northern Pacific interchange yard about 1.2 miles. Those from the Milwaukee to the S.P.&S. are delivered by the Milwaukee at the Northern Pacific yard during the period when the Northern Pacific is handling cars for the account of the S.P.&S. Any cars received by the Milwaukee from the S.P.&S., are taken to the former's yard in Spokane and placed in trains for eastbound movement.

The distances between Spokane and the Twin Cities over the Milwaukee, the Great Northern, and the Northern Pacific are 1,469, 1,454, and 1,496 miles, respectively. All three are standard transcontinental railroads with similar access through their connections to all parts of the United States.

Typical examples of the present carload rates over Milwaukee and S.P.&S. routes, as compared with those over the S.P.&S. and one northern line, or both, respectively, [fol. 165] together with the respective distances are: On lumber from Eugene to Chicago, $1.245 and $1.115 for distances of 2,302 and 2,271 miles; on lumber from Portland to Pittsburgh, Pa., $1.555 and $1.29 for distances of 2,708 and 2,734 miles; on frozen strawberries from Portland to Pittsburgh, $2.78 and $1.75 for distances of 2,708 and 2,734 miles; on pears from Bingen-White Salmon, Wash., to Milwaukee, Wis., $2.67 and $1.84 for 2,092 and 2,062 miles; on agricultural implements from Rock Island, Ill., to Portland $3.17 and $2.47 for 2,179 and 2,155 miles; and on structural iron and steel from Chicago to Portland, $1.89 and $1.48 for 2,252 and 2,278 miles.

The Milwaukee operates two regularly-scheduled freight trains between Tacoma, Wash., and Chicago, one eastbound and the other westbound, and there is regularly-scheduled connecting service between Plummer Junction, on the main line of the Milwaukee southeast of Spokane, and Spokane for both trains. Additional main-line service is provided, as required, to meet traffic requirements. As of June 4, 1954, the Milwaukee owned 55,033 freight cars, the S.P.&S., 3,444, the Great Northern 38,738, and the Northern Pacific 37,086. The Milwaukee usually has sufficient cars on hand, not only to supply its own needs and the specific requests

from connecting lines, but also to report excesses to the Association of American Railroads, called the A.A.R.

The maximum grade, eastbound, on the line of the Milwaukee between Spokane and the Twin Cities is 1.7 percent, as compared with maximum grades of 1.8 percent on the Great Northern and 1.9 percent on the Northern Pacific. The maximum grades westbound for the Milwaukee, Great Northern, and Northern Pacific are 2.2, 1.0, and 2.2 percent, respectively. The operating conditions, mile for mile, on the respective routes are substantially similar.

[fol. 166] Between Avery, Idaho, and Harlowton, Mont., 440 miles, and between Othello, Wash., and Seattle and Tacoma, approximately 225 miles, the line of the Milwaukee is electrified.

The Milwaukee acquired 12 additional electric locomotive units in 1950 and retired some units, so that the total units changed from 102 in 1950 to 105 in 1953. As of September 30, 1954, the Milwaukee's locomotive power was 60,741,353 pounds of starting tractive effort, which is a standard unit of comparison, as compared with 60,494,467 pounds as of September 30, 1943. The percentage of gross ton-miles operated on the Milwaukee lines, as a whole, by steam, diesel, and electric locomotives in 1943 was 86.7 percent steam, 6.5 percent diesel, and 6.8 percent electric. In 1954, the percentages were 7.7, 84.7, and 7.6 respectively. Upon completion of the delivery of 74 additional diesel locomotives on order, the Milwaukee will be completely dieselized on the portions of its line not covered by electric operation. Among its recent improvements or additions, the Milwaukee, in 1953, completed a 70-track hump classification yard with automatic switching and push button speed control at Bensenville, Ill. In 1952, the same thing was done at its yard in Milwaukee, and in 1947, an extension of its St. Paul yard was completed. The cost of the foregoing was approximately $9,000,000.

From South Minneapolis, Minn., to Mobridge, the distance over the Milwaukee is 382 miles, of which 147 miles are under centralized traffic control. This type of control, which speeds up operation, is also in use on a portion of the Milwaukee's trackage in the Twin Cities area.

From the Twin Cities to the Pacific coast, the Milwaukee, in 1953, handled 11,439,631,000 gross ton-miles of all classes [fol. 167] of freight traffic. In 1943, the total was 14,559,747,000, or 127.27 percent of the 1953 tonnage. The total Milwaukee freight gross ton-miles for 1953 were 36,730,763,000, as compared with 41,770,570,000 in 1943. The record indicates that the Milwaukee has adequate facilities for handling a greater amount of traffic than it now enjoys.

Transit.—The Milwaukee offers a large number of transit privileges at points on its line. These include the customary transit privileges such as stops for partial loading or unloading, storage, grading, packing, sorting, consolidating, concentration, milling, fabrication, assembling, and distributing of many commodities, and in the case of livestock, grazing, feeding, and trying the market, among others. Such privileges, considered valuable by certain shippers in marketing operations and permitting freer flow of traffic through the transit points, are available only when joint rates via the transit points are maintained. These privileges would become applicable automatically under the single-factor through rates sought in this proceeding. Below are shown instances where they could be used advantageously by shippers.

In the case of shipments of sheep originating at Washtucna, Wash., or some other local point on the S.P.&S., stopping in transit for summer grazing in the areas along the lines of the Milwaukee in northern Idaho would be permitted under the transit arrangement. Later, the sheep could be marketed in the Midwest or East, and the through rate from point of origin would apply. Shipments of lumber originating at points on the S.P.&S. might be stopped at St. Maries, Idaho, a local point on the Milwaukee, 63 miles east of Spokane, for the completion of loading or for [fol. 168] further finishing, and shipped to off-line markets at joint through rates. A feed-mill operator at Spokane, with customers or branches on the S.P.&S., would be able to couple up credits representing movements of wheat or its products from Milwaukee points in Montana with soybean meal from Minnesota and corn from Iowa, for example, and secure protection of the balance of the through rates on the entire mixture, whereas under the present

restricted application of rates such a shipper must forego the use of Milwaukee originated tonnage or be subjected to the local rate from Spokane to S.P.&S. destinations, which would result in transportation charges substantially higher than on grain originating at common and cross-country points on the northern lines in Montana. For example, the absence of the joint through rates sought prevents the use of the milling-in-transit privilege at Harlowton on wheat originating at Geraldine or numerous other Milwaukee stations in Montana when destined to Pasco and Goldendale, Wash., Astoria, and numerous other local points on the S. P. & S.

It is a common practice to stop for partial unloading shipments of manufactured articles from the East to Pacific coast destinations at two or three intermediate points en route. There are many points in the intermediate territory, served exclusively by the Milwaukee, which are now precluded from that privilege because of the restricted application of rates over the Milwaukee to S.P.&S. points. Higher combination rates would apply if a shipment were stopped at a Milwaukee point for the purpose mentioned.

There are many points in Montana which are common to the Milwaukee and to only one or the other of the northern lines. Great Falls is served by the Milwaukee and the Great [fol. 169] Northern and is designated as an intermediate point for the purpose of stops in transit. Missoula, which is served by the Milwaukee and Northern Pacific, is also an intermediate point. Under Milwaukee tariffs, a shipment moving beyond Missoula may be stopped in transit at both Great Falls and Missoula. The same situation applies with respect to Lewiston, served by the Milwaukee and the Great Northern, and Bozeman, served by the Milwaukee and the Northern Pacific. The Milwaukee is in a position to combine shipments, Lewiston with Bozeman or Great Falls with Bozeman or Missoula, under the rates sought, and protect the through rates on transcontinental movements. Neither the Great Northern nor the Northern Pacific could do this.

On westbound transcontinental shipments, it is sometimes necessary for shippers to change the destination point en route. For instance, on a shipment initially consigned to

Seattle, with stops at intermediate points on the Milwaukee, the competitive rate to that destination would be protected, but, should it become necessary also to stop at an S.P.&S. point, or to change the destination to an S.P.&S. point, the shipment would be subjected to a higher combination rate.

Among westbound transit privileges at stations served by the Milwaukee between Mobridge, S. Dak., and the Twin Cities, which would be available if the Spokane gateway were open on an equality of rates in connection with the Milwaukee to S.P.&S. territory, is stopping to complete loading of dairy products, and the transiting of canned goods at Glencoe, Minn., a local station on the Milwaukee. Similar conditions obtain on eastbound shipments, such as lumber, fresh fruits and vegetables, and seeds. Transit [fol. 170] privileges are especially valuable at small stations where full carloads cannot be handled economically. As to lumber, while there are through rates on lumber and lumber products via Spokane to various local points on the Milwaukee, a shipper who diverts a shipment to an off-line destination beyond the local point must pay freight charges at the higher combination rates. This situation acts as a deterrent to the establishment of plants for the milling or manufacturing of lumber at points on the Milwaukee. Between Spokane and Mobridge the Milwaukee serves 315 local points.

The Secretary of Agriculture takes the position that the exclusion of the Milwaukee from full participation in the traffic moving to and from the S.P.&S. territory makes impossible the desired flexible and expeditious distribution of agricultural commodities and farm supplies by producers and shippers. The evidence shows that large quantities of agricultural commodities are produced in and distributed from the Pacific Northwest; that Oregon and Washington are surplus-producing areas for many of such commodities; and that Spokane is an important gateway for their distribution.

From 1940 to 1950, the population of Washington increased 37 percent and that of Oregon by 39.6 percent. The number of cattle, calves, sheep, and lambs on farms in those States increased from 2,278,000 in 1950 to 3,490,000 in 1954. The sales of such important commodities as wheat,

corn, and oats in 7 of the States in the considered area, namely, Iowa, Minnesota, Montana, Oregon, South Dakota, Washington, and Wisconsin, increased from 411,908,000 bushels in 1939 to 700,517,000 bushels in 1952. In Oregon and Washington apples, pears, and potatoes produced for [fol. 171] marketing increased from 44,487,000 bushels in 1939 to 54,325,000 bushels in 1952. During the same period vegetables and noncitrus fruits produced for commercial processing increased from 380,606 tons to 563,743 tons. In those two States poultry sales increased from 56,640,000 pounds in 1939 to 146,823,000 pounds in 1952. In the same period the production of cheese in the 7 States above mentioned increased from 419,869,000 pounds to 654,694,000 pounds. The production of lumber in Oregon and Washington increased from 9,008,803,000 board feet in 1939 to 12,527,000,000 board feet in 1952. The exports of agricultural products through the ports of Astoria, Portland, and Vancouver increased from 864,356 tons in 1939 to 1,851,487 tons in 1952.

In 1953 alone, 12,909 carloads of Oregon and Washington potatoes were shipped to 100 markets located throughout the United States, including numerous markets served by the Milwaukee. In the same year a total of 3,551 carloads of fruits and vegetables originated at points served by the S.P.&S., and it interchanged 5,015 carloads of products of agriculture at Spokane with the northern lines.

Both the main line and the Elk River branch of the Milwaukee traverse the St. Joe National Forest in Idaho, and the Forest Service has made 43 allotments for the grazing of cattle and sheep there, which comprise an area of 826,160 acres, having a carrying capacity of 24,900 sheep and 3,758 head of cattle. That the grazing areas are not being used to capacity is shown by the fact that in 1954 the aforementioned area had only about 8,000 head of sheep. Extensive logging operations in Idaho, in both the National Forest and other areas, add to the grazing areas as the timber is removed. Greater utilization of these areas for [fol. 172] summer grazing, the evidence indicates, would increase the volume of movement of livestock on the Milwaukee to eastern feed lots, mainly in Iowa, Minnesota, and Illinois.

On its main line between Spokane and the Twin Cities the Milwaukee has major livestock feeding and watering facilities at Avery, Deer Lodge, Harleton, and Miles City, Mont., and Aberdeen and Montevideo, Minn. As of October 1954, the Milwaukee owned 2,581 single-deck and 738 double-deck stock cars.

Evidence on behalf of the defendants.—The S.P.&S. system defendants admit that they have refused to enter into a full line of joint rates with the Milwaukee at the Spokane gateway, but state that the Milwaukee's request for such rates has been declined at the direction of the northern lines.

All stations on the Oregon Trunk, except Wishram, Wash., are also stations on the Union Pacific. Many stations on the Oregon Electric, including Portland, are also stations on the Southern Pacific. The principal stations on the S.P.&S. proper in the Portland area are also served by either the Union Pacific or Southern Pacific, or both, as well as by the northern lines. The Union Pacific and Northern Pacific serve Kennewick, Wash., on the line of the S.P.&S., 151 miles southwest of Spokane. The Union Pacific also serves a number of smaller stations in Washington reached by the S.P.&S., and its line on the south bank of the Columbia River parallels the line of the S.P.&S., on the north bank for many miles.

Routes on traffic moving over the S.P.&S., between points on its lines and points generally east of Spokane, are designed to preserve to the northern lines their long hauls. With minor exceptions, heretofore mentioned, joint through [fol. 173] rates apply only via Spokane in connection with the northern lines east of Spokane; via Pasco, Wash., 148 miles southwest of Spokane, in connection with the Northern Pacific east of Pasco; and via junctions in the Portland area and a northern line beyond. From and to common points on the S.P.&S. and the Southern Pacific, there are routes over the latter through various gateways, including Ogden, El Paso, Tex., and Portland. From and to common points on the S.P.&S. and the Union Pacific, there are routes in connection with the latter via Council Bluffs, Iowa, Kansas City, and Marengo, 62 miles west of Spokane over the Milwaukee, among other junctions.

In 1953, the Northern Pacific handled 37,907,214,000 gross ton-miles of all classes of traffic, as compared with 42,342,309,000 in 1943. The starting tractive effort of its motive power increased from 45,244,000 pounds to 48,601,000 pounds in 1953. While the decrease in the gross ton-miles of freight handled by the Great Northern from 1943 to 1953 has not been significant, there has been a decrease in the number of cars over that portion of its line over which S.P.&S. traffic moves. During the period mentioned, its net investment in road and equipment showed a net increase of $180,625,510. The evidence shows that both northern lines have surplus capacity, are efficiently operated, and furnish good service to shippers over their lines. They provide numerous through freight trains each day between Spokane and the Twin Cities.

The distances over the existing routes of the S.P.&S. and one or the other of the northern lines are comparable with the distances over the routes sought by the Milwaukee. To illustrate, from Pasco, Wash., to numerous points east of [fol. 174] Montana, the percentage of circuity over a Milwaukee route in no instance is in excess of 2 percent over the shortest northern-line route.

As to certain types of freight cars, such as 50-foot box cars and refrigerator cars, the combined ownership of the northern lines is much greater than that of the Milwaukee. Although conceding that car ownership is not necessarily determinative of ability to supply cars, the northern lines insist that they are in a better position to supply the S.P.&S. lines with cars than are other carriers. They take into consideration the requirements of those lines in placing orders with the Car Service Division of the A.A.R., and in supplying those lines with cars the northern lines treat them the same as they do operating divisions on their own systems. The northern lines furnished the S.P.&S. with 18,149 cars in 1953 and 21,034 cars in 1954.

The only car shortages on the S.P.&S. in 1953 were in the heavily-insulated and mechanical-type refrigerator cars, which occurred for brief periods in July and October, and in 50-foot box cars for a two-week period commencing the last of October. The only shortages in 1954 were in the same type of equipment. On June 23 there was a shortage

of heavily-insulated refrigerator cars. Beginning in November and extending until January 6, 1955, there was a shortage of 50-foot box cars. An unusually large number of orders were placed with the S.P.&S. for this type of car during that period. This was occasioned by the inability of steamship lines, because of labor difficulties, to handle paper normally transported by them. The evidence tends to show that when car shortages occur on any railroad serving the Pacific Northwest there are car shortages in varying degrees on all railroads serving that area.

[fol. 175] The S.P. & S. and the northern lines object to the establishment of the joint through rates sought upon the principal ground that routes composed of the S.P. & S. and the Milwaukee would short haul the existing routes composed of the S.P. & S. and the northern lines. The latter point out that, except for the fiscal year ended June 30, 1911, there was no year in which the net railway operating income of the S.P. & S. was as much as the accrued interest on its outstanding bonds, until 1941. This fact, they contend, demonstrates that the importance of the S.P. & S. project to them was not S.P. & S. revenues on local traffic but revenues on long-haul traffic. As above-mentioned, it has cost the northern lines approximately $218,000,000 to keep the S.P. & S. in operation since 1910.

When the transcontinental railroads extended their lines to the North Pacific coast around the turn of the century there were already in existence a number of short lines of railroad, many of which were independently operated, and as a transcontinental line acquired or secured control of a short line the rates of the latter were immediately restricted to the routes of the transcontinental line which acquired it. This practice has effectively confined the rates on traffic originating or terminating on each subsidiary to routes affording the parent line its maximum haul.

The Milwaukee is one of a number of intermediate carriers participating in routes from and to the above-mentioned Southern Pacific and Union Pacific points. On westbound traffic, the Milwaukee routes are unrestricted and apply via Marengo, thence Union Pacific, or Union Pacific to Portland and Southern Pacific beyond. On eastbound traffic, [fol. 176] the Marengo routes on classes and commodities

generally are restricted so as to apply only to destinations west of Chicago, north of the Milwaukee's Omaha-Chicago line, and only to destinations in official territory reached over car-ferry routes across Lake Michigan. The eastbound rates on lumber via Marengo are less restricted. They apply over the car-ferry routes to official territory east of the Illinois-Indiana State line, to destinations west thereof on and north of the Omaha-Chicago line, and to all Milwaukee stations west of Indiana. The Marengo gateway affords the Milwaukee its long haul, but, as previously noted, the movement via that gateway in connection with the Milwaukee is comparatively light. The Milwaukee also participates in routes without restriction between the Union Pacific and Southern Pacific points referred to and points in the United States east and south of the Missouri River as to traffic it interchanges at Omaha, Kansas City, and other western trunk-line gateways.

As indicated, there have been published or approved a full line of joint through rates on forest products from S.P. & S. points to most points on the Milwaukee east of Spokane, and a very limited number of joint through rates on other commodities between S.P. & S. points and Milwaukee local territory west of the Twin Cities. Whenever there is an application indicating a need therefor, the northern lines are agreeable to the establishment of additional joint through rates, between the S.P. & S. and the Milwaukee on other classes and commodities to and from Milwaukee local territory.

Eastbound forest products moving to destinations beyond the Milwaukee and the northern lines, on which one of the latter lines serves as an intermediate carrier, con- [fol. 177] stitute the principal traffic involved herein. In 1953, such movement of those commodities amounted to 25,541 carloads, and the movement thereof to all destinations, including points served by the Milwaukee, aggregated 31,821 carloads, on which the northern lines received revenue of $11,347,163. Approximately 88 percent of the forest-products traffic which the Milwaukee would be able to solicit terminates in official, southern, and western trunk-line territories. All traffic interchanged in that year between the northern lines and the S.P. & S. moving both eastbound and

westbound, totaled 53,923 carloads, and the revenue which accrued thereon to the northern lines was $21,959,415. In the event the joint competitive rates sought were established, this traffic potentially would be available for Milwaukee solicitation.

The vice president in charge of traffic of the Great Northern testified that each of the northern lines would probably lose more than $3,500,000 annually in revenue from traffic originating and terminating on the S.P. & S. if the rates sought were made effective. The basis for this estimate is his survey of the traffic and revenues concerned, his experience in meeting the competition of the Milwaukee and other railroads, and in making surveys and estimates for many years. The foregoing possible revenue loss of $21,959,415 to the northern lines is far in excess of the amount of approximately $2,500,000, previously referred to, estimated by the Milwaukee. However, that estimate was based on the freight traffic which moved in some linehaul service over the Milwaukee. It did not take into consideration any traffic moved between S.P. & S. points and points east of Spokane over the northern lines and their connections other [fol. 178] than the Milwaukee, nor traffic which the northern lines handled to and from stations on their own lines which are also reached by the Milwaukee.

The W. T. L. lines furnished estimates of the possible loss of traffic to them in the event that the joint routes and rates sought were made effective. They emphasize the fact that the considered traffic now handled by the northern lines must be interchanged at the Twin Cities, except such traffic as may be interchanged between those lines and the Burlington at Laurel and between the Great Northern and the Burlington at Sioux City, and the further fact that the Milwaukee is able, from a physical standpoint, to handle traffic over its own lines between points on the S.P. & S. and Chicago and certain points east thereof. Presently, the Milwaukee competes with the W. T. L. lines for traffic which the northern lines cannot handle east of the Twin Cities.

All the traffic which the W. T. L. lines presently interchange with the northern lines is now subject to Milwaukee solicitation, but those lines fear that if the joint rates sought became effective the Milwaukee would be able to obtain east-

bound traffic at Spokane, for example, for hauls beyond the Twin Cities, thereby reducing the tonnage available for their solicitation at that gateway. They state that the possibility of a two-line rather than a three-line haul from S.P. & S. origins would give the Milwaukee a definite solicitation advantage over the northern lines. The Milwaukee would also be in a position to solicit traffic at points east of the Twin Cities, destined to points on the S.P. & S., for movement over its line direct to Spokane. The estimated annual value to these lines of the potential traffic which [fol. 179] each stands to lose is in excess of $900,000 for the North Western, $908,653 for the Burlington, $355,441 for the Rock Island, and $282,290 for the Minneapolis & St. Louis.

In 1954, the Milwaukee received about 5,000 cars of eastbound freight at the Twin Cities on which the northern lines had received the long haul. It is estimated by the Milwaukee that it has given to the W. T. L. lines at the Twin Cities, because of shipper routing, more than 20 percent of the traffic which it has originated, or received at western junctions, and could have hauled further. It is the complainant's desire that the routing of traffic east of the eastern gateways remain free and open to all carriers serving such gateways to the same extent as now prevails.

To show that the northern lines cannot afford to lose any portion of the traffic they are now handling, attention is invited to the rate of return on net investment of each in recent years. The Northern Pacific in 1953 showed a net return of only 2.19 percent. Its rate of return has been less than 3 percent in seven of the nine years beginning with 1946 and ending with 1954. A loss in freight revenue of $3,500,000 annually would enable it to reduce operating expenses only by an estimated $46,000. Less traffic in substantially the same number of trains which it states would be required, would result in a less efficient and less economical operation. In 1953 the rate of return of the Great Northern was 4.10 percent. During the nine years from 1946 to 1954, inclusive, its rate of return has ranged from a low of 3.46 percent in 1949 to a high of 4.65 percent in 1948. Should this carrier's freight revenue be reduced by [fol. 180] $3,500,000 a year, it would be able to eliminate

some of its eastbound trains, but the resulting reduction in operating expenses has not been estimated.

Evidence was submitted by representatives of employees of the northern lines for the purpose of showing the effect upon them if there were a diversion to the Milwaukee of any portion of the traffic now handled by the northern lines. Based on 1954 average figures, the employees of the northern lines number approximately 51,000. They consist of about 11,000 operating employees and 40,000 nonoperating employees. The evidence is to the effect that any one of these employees has substantial cause to fear that if the Milwaukee prevails in this proceeding either his seniority rights will be affected adversely, or, in the case of an employee with little seniority, that his job will be placed in jeopardy.

Should each of the northern lines lose freight revenue in the estimated amount of $3,500,000 annually, it was predicted that at least 1,063 nonoperating employees of these lines would be laid off. The job losses for operating employees was not estimated, but it was stated that the losses in that category would be substantial. The evidence shows that the northern lines pay out about 50 percent of each revenue dollar in salaries and wages, and that when business declines employees are eliminated so as to maintain the proportion at approximately 50 percent.

[fol. 181] A discussion of the testimony offered by shippers and receivers of various commodities in support of and in opposition to the complainant, together with other evidence with respect thereto, may be summarized as follows:

Lumber and forest products—The lumber industry is one of the most important in the Pacific Northwest, and large volumes of this traffic move from this area. The Western Forest Industries Association, whose members include loggers, sawmill operators, piling producers, remanufacturers, and wholesale distributors of lumber in several of the western States, a number of which have plants on the lines of the S.P.&S., adduced evidence in support of the complainant. This evidence, in substance, is that the marketing of western lumber and forest products requires flexible and liberal routing, together with

liberal transit privileges. Economical transportation costs, resulting from competitive through rates, are necessary because the production of these products in the Pacific Northwest greatly exceeds local needs and the bulk of it is marketed principally in the Midwest and East in competition with lumber produced in the South and elsewhere; the center of western lumber production is constantly shifting; the market is unpredictable with demand and prices fluctuating from day to day, thereby necessitating the diversion of cars from a weakening market to one of greater strength; and in recent years, retail lumber yards, the best customers of western lumber producers, have been replenishing their stocks at frequent intervals. To meet this demand and also to avoid cancellation of firm orders by purchasers, when mills are sometimes prevented from [fol. 182] making shipments when specified because of car shortage, there has developed the custom of loading and shipping so-called transit cars, which are billed to a convenient junction point in the Midwest or East. The seller, usually a wholesaler, when a buyer is found diverts the transit car to the buyer's station.

The transit method of merchandising necessitates flexible routing, and shippers are reluctant to ship a transit car over a route which does not have competitive through rates. The members of the aforementioned association are not large enough to have their own sales organizations and must rely mainly upon wholesalers, such as those who engage in transit shipping to sell their output. Presently, some wholesalers make no effort to sell lumber produced at mills on the S.P.&S. in Milwaukee territory because, if they ship via Spokane in connection with the Milwaukee, they cannot move the cars out of Milwaukee local-territory points without paying higher rates. Such points are called closed or pocket markets.

Persons actively engaged in the business of manufacturing or marketing lumber produced in the Pacific Northwest, and others who purchase such lumber, offered evi-

---

[7] A "firm" order shipment is one for which a sale has been made to the ultimate receiver before the car is billed out of the origin point. A "transit" shipment is one which is not sold prior to the billing from the point of origin.

dence which confirms, in the main, the evidence discussed above. Among these are four lumber wholesalers at Eugene. Their shipments eastward aggregate approximately 16,000 carloads annually, the major portion of which are sold in transit. During 1953, one of these wholesalers shipped about 2,000 carloads which were billed for partial unloading. These shippers purchase lumber in Oregon and Washington on the lines of the Oregon Electric and the S.P.&S. at points both common and local. They assert that unrestricted routing, with transit privileges including free [fol. 183] diversion rights, over routes via Spokane, in connection with the Milwaukee, would be helpful to them in the purchasing and marketing of lumber. The testimony of other lumber wholesalers, located at Portland, Seattle, and Tacoma, who purchase lumber at points on the S.P.&S. and ship a large number of transit cars eastward, is to the same effect respecting rate and transit restrictions. Certain purchasers of lumber at points in the Midwest desire the Milwaukee routes because they would afford single-line tracing of their cars.

A manufacturer and wholesaler of lumber located at St. Maries ships an average of 1,000 carloads of lumber per year from or through St. Maries. This company remanufactures and finishes lumber in transit, and also completes loading of lumber in transit. Because of the rate and transit restrictions, it is difficult for it to handle lumber which originates in Oregon on the S.P.&S., or on the Oregon Trunk, regardless of whether it is routed over the S.P.&S. or the Union Pacific.

Representatives of 26 west-coast lumber shippers testified in support of the defendants. Eighteen of them represented manufacturers of lumber and other forest products with 30 plants, 21 of which are served by the S.P.&S., and eight represented wholesalers. These concerns sell lumber principally on a firm-order basis rather than on a transit basis. Although the evidence indicates that the pattern of marketing west-coast lumber has changed in recent years so that transit operators are now a large and increasing segment of the industry, most of the witnesses expressed disapproval of transit wholesalers of lumber. Some of them asserted that this method of marketing lumber re-

duces the car supply and tends to lower the market price of lumber.

[fol. 184] The total volume of rail shipments from the plants of the 18 manufacturers of lumber is approximately 35,000 carloads annually, of which about 21,000 are from plants served either solely by the S.P.&S. or jointly by the S.P.&S. and one or more other rail carriers. These plants, three of which manufacture plywood, are distributed throughout S.P.&S. territory, except that none is served by the Oregon Trunk. The total lumber sales of the eight wholesalers approximate 34,000 carloads a year.

Most of the above-mentioned lumber manufacturers and wholesalers engage to some extent in the practice of starting part loads from their plants with stops intermediate to complete loading and also for partial unloading. Most of such stops are at points taking the same rate. These lumber shippers have had comparatively few carloads rejected that required diversion to other destinations. On the whole, the representatives of these shippers expressed satisfaction with the ability of the S.P.&S. to supply shippers with cars.

The defendants assert that there is no need for through routes and joint rates which would permit a car of lumber originating on the S.P.&S. to move via Spokane thence over the Milwaukee for partial loading or unloading or for diversion at points on the Milwaukee when the final destination is on the lines of connecting carriers. They show that in 1953 only 23 carloads of forest products, out of a total of 31,821 carloads delivered by the S.P.&S. to the northern lines, were stopped for partial unloading at points west of the Twin Cities, and all 23 cars were made empty at the Twin Cities or at points west thereof. They also point out that cars are sometimes billed for partial unloading at a point convenient for diversion to another [fol. 185] destination without any intention of partial unloading at that point. This practice has been indulged in by the wholesaler who billed about 2,000 carloads for partial unloading in 1953. A somewhat similar pattern is shown for cars stopped to complete loading at points on the northern lines in 1953.

On and between September 1, 1954 and February 28, 1955, the Milwaukee transported 14,250 carloads of lumber and other forest products eastbound through Avery, Idaho. Apparently all or substantially all of these cars could have been stopped at St. Maries or other points for partial unloading or to complete loading, but the record fails to show how many, if any, were stopped for those purposes. Neither does it show how many of these were transit cars originally consigned to a destination on the Milwaukee and diverted to destinations on connecting lines.

Some of the shippers who testified in support of the complainant sometimes ship transit cars to a diversion point which is off the main line for the indicated purpose of slowing down the movement of the car until a sale can be made. The Milwaukee does not have internal routing restrictions and some shipments have been consigned to Canton, S. Dak., for example which is about 180 miles south of its main line point of Aberdeen, and later diverted to the Twin Cities or Duluth. Canton, however, apparently would not be out of line on shipments diverted to points east and south thereof. The defendants contend that the principal reason why some shippers desire the S.P.&S.-Milwaukee route is that it would permit them to consign transit cars to points which would delay the movement thereof.

We have never condemned reasonable transit or diversion privileges, such as stopping for partial loading and [fol. 186] unloading, the diversion of a car from one destination to another, stopping for milling or fabrication, or storage, where the nature and sale of a commodity requires such privileges, but the improper use of freight cars has been looked upon with disfavor. While it is not within our province to pass upon the respective merits of the two methods of merchandising lumber, namely, firm sales and transit sales, the deliberate routing of traffic so as to slow the movement thereof is a practice which cannot be regarded as in the public interest.

Grain.—A wholesale grain dealer at Seattle buys corn from dealers in Minneapolis, Sioux City, and Omaha, as well as at country origins in the Midwest, which is sold in

the Pacific Northwest. Generally, when a car is shipped from the origin point the ultimate destination is not known. In such instances the cars are usually billed for diversion to either Spokane or Seattle with the delivering carrier specified. If a shipment cannot be diverted from Spokane, for example, at the balance of a joint through rate from origin to destination, the buyer will either refuse the shipment or insist on a substantial discount. It is important to this company, therefore, to have widespread routes, Spokane and west, which will permit liberal use of transit privileges. The absence of joint through rates on westbound shipments of grain from Milwaukee origins to destinations on the S.P.&S. on traffic routed over the Milwaukee via Spokane tends to cause this company to limit the shipment of corn from Milwaukee origins to Spokane to that which may be disposed of at destinations on the Milwaukee and this situation results in frequent shortages for such destinations. There are, however, joint through rates on corn from Milwaukee origins to destinations on the S.P.&S. on [fol. 187] traffic routed over the Milwaukee to Terry, Mont., the Northern Pacific to Spokane, and the S.P.&S., which traffic may be diverted to such destinations at Spokane at the transit balance. Shipments from origins on the Milwaukee may also move over that carrier to Spokane and be diverted to many destinations on the Union Pacific when routed over the Milwaukee to Marengo without rate penalty when the inbound rate from the primary origin to Sioux City, for example, does not exceed 19.5 cents.

Evidence was offered by the Omaha Grain Exchange whose members do a general grain business in the terminal market of Omaha. Corn which originates on the Milwaukee and moves into the Omaha market for storage and subsequent movement may not be shipped to destinations on the S.P.&S. at joint through rates when routed over the Milwaukee via Spokane, but, as indicated, it could move under joint through rates when routed over the Milwaukee and the Northern Pacific via Terry. The testimony is to the effect that with more flexible routing, as herein sought, these grain dealers would be in a better position to compete with other midwestern markets, such as Minneapolis and Sioux City, but the record is somewhat vague in this respect.

It appears to be the general practice of the transcontinental carriers which bring the corn into Spokane to limit the use of transit balances to destinations on their respective lines. For example, corn moved over the Great Northern from Minneapolis to Spokane could not be diverted at joint through rates or rate balances to destinations on the Milwaukee or the Northern Pacific, and that which moved into Spokane over the Northern Pacific could not be diverted at transit balances to destinations on the Milwaukee [fol. 188] or the Great Northern. Such shipments, however, could be diverted at Spokane to destinations on the respective lines of the inbound carrier or to destinations on the S.P.&S. under joint through rates. Representatives of two other grain dealers in Pacific Northwest territory testified that they have experienced no difficulties in handling their products over the present through routes and see no necessity for opening the routes sought.

Wheat growers in Milwaukee territory in Montana want the opportunity to ship their wheat to points on the S.P.&S., particularly Astoria, at charges comparable with those paid by shippers on the Great Northern and Northern Pacific, and operators of grain elevators at Geraldine and White Sulphur Springs, Mont., state that under the present combination rates their wheat would sell for about 2 cents a bushel less than that of their competitors on the Northern Pacific. The S.P.&S. is willing to establish a through route and joint rates from the Milwaukee origins in Montana to Astoria if it is assured that the rates will be used and the Milwaukee will concur.

Fresh fruits and vegetables.—Testimony as to the desirability of the through routes and joint rates sought on fruits and vegetables was submitted by an officer of a company engaged in the sale and distribution of these commodities at Mitchell and Sioux City, both located on the Milwaukee. This company obtains fresh fruits and vegetables from various parts of the country. It handles from 600 to 800 carloads a year, approximately 100 of which are shipped from the Pacific Northwest. An average of about one a week is rejected for various reasons. The rejected shipments must be resold and it is necessary, in order for the [fol. 189] distributor to maintain good relations with sup-

pliers and brokers, to have a wide territory to which these cars may be reshipped.

Through routes and joint rates are in effect on these commodities from various origins on the Southern Pacific and the Union Pacific, many of which are common with the S.P.&S., over the Union Pacific to Marengo and the Milwaukee beyond to both Mitchell and Sioux City, but shipments over this route cannot be diverted without rate penalty to destinations south of the Milwaukee's line from Omaha to Chicago. From origins on the S.P.&S., through routes and joint rates apply via Spokane, thence the Northern Pacific to Oakes, N. Dak., and the North Western and the Milwaukee, or via Spokane, thence the Great Northern to Willmar, Minn., and the Milwaukee, but these routes are said to be undesirable because of delays and circuity. There is, however, a through route and joint rates from S.P.&S. origins via Spokane, thence the Northern Pacific to Jamestown, N. Dak., thence the line of the Midland Continental Railroad to Edgeley, S. Dak., and the Milwaukee through Aberdeen to Mitchell and Sioux City, which is said to be as desirable in all respects as the route sought via Spokane, thence the Milwaukee.

Coal.—There is a coal mine at Roundup, Mont., a point on the Milwaukee, and coal is shipped from there to points in various States, including the State of Washington. Comparisons are made of the combination rates on coal applying from Roundup via Spokane to points on the S.P.&S. with the present joint through rates on coal from mines at Red Lodge, Mont., on the Northern Pacific. Although the distance to each point from Red Lodge is slightly longer than from Roundup, the combination rates from the latter are materially higher than the joint through rates from the former. The establishment of reasonable joint through rates from Roundup to points on the S.P.&S. would enable [fol. 190] the operator there to enter this potential market on an even basis.

The operator of a wholesale fuel business at Portland whose distribution territory includes points on the S.P.&S. and the Oregon Electric in Washington and Oregon, is interested in developing markets for coal from various locations, but because of the present rate situation, it is not

possible to do so with coal produced at Roundup. If it can be shown that there would be a movement from Roundup to points on the S.P.&S., the latter states, on exceptions, that it is willing to join the Milwaukee in publishing the rates sought. Thus no further consideration need be given to the complaint as to this commodity.

Furniture.—A company at Seattle distributes school furniture and equipment, theater equipment, church furniture and equipment, and similar items, most of which comes from a manufacturer at Menominee, Mich. It also obtains these items from Jasper, Ind., Chicago and Aurora, Ill., Liberty, N. C., and Waco, Tex. It sells to buyers at points in various States, including points in Montana and S.P.&S. points in Washington and Oregon. This distributor never knows in advance of the actual receipt of orders just when or where deliveries are to be made. It has been dealing in theater equipment extensively in Montana for many years, and sales of school and church furniture are now being developed there with the expectation of a substantial increase in the volume of business. Furniture and equipment have been sold at such S.P.&S. points as Camas and Pasco, Wash., and Rainier, Eugene, Albany, Salem, and numerous other points throughout the Willamette Valley in Oregon. The distributor deals extensively in part carloads and utilizes the privilege of stops for partial unloading. The [fol. 191] bulk of the furniture shipped from Menominee starts in carload lots, which are frequently combined shipments for various stops en route. If the occasion were to arise, it would be a convenience for it to combine shipments to points in Montana on the Milwaukee with shipments to points on the S.P.&S., which it cannot do under the present rates.

The record shows the details concerning 35 carloads shipped on and between August 12, 1952 and November 11, 1954, from Menominee to the Pacific Northwest, which are representative of the carloads stopped for partial unloading in that period. Of these, only one carload was partially unloaded at a point served exclusively by the S.P.&S. This car was routed over the Milwaukee-Great Northern to Seattle where it was partially unloaded and the remainder moved to Rainier, Oreg. The traffic manager of a large

manufacturer of school, theatre, and church furniture at Grand Rapids, Mich., testified that his company makes shipments to destinations in Montana, Oregon, and Washington, and he has never experienced any difficulty in making stops in transit under the present rates and routes.

Agricultural implements.—A company at Racine, Wis., has been engaged in the manufacture and sale of agricultural implements, including tractors, for 112 years. It has a number of plants in the Midwest, some of which are served by the Milwaukee. To the Pacific Northwest, it ships from 200 to 250 carloads a year, valued from $15,000 to $25,000 per carload. It has dealers located in S.P.&S. territory and frequently avails itself of the privilege of stopping for partial unloading or storage in transit in connection with its shipments to that territory. The partial-unloading privi- [fol. 192] lege is necessary in the distribution of these commodities to accommodate orders for less than carloads. It is stated that the proposed routes and rates would be of benefit to this company, which keeps a stock of its implements in warehouses at Spokane and Portland. If the through rates sought were in effect, it would be in a position to ship outbound to S.P.&S. points from Spokane carloads moving into that point over the Milwaukee as well as over the northern lines. Shipments destined to Spokane may now be stopped for partial unloading at points on the Milwaukee, and the same is true as to shipments routed over the Milwaukee to Marengo when the final destination is on the Union Pacific or the Southern Pacific.

Iron and steel grain bins.—A manufacturer and shipper of iron and steel grain bins, among other things, is located at Sioux Falls, on the rails of the Milwaukee. This concern is the largest manufacturer in the United States of diversified sheet-steel farm equipment. In 1953 it used 16,000,000 pounds of iron and steel, and its estimated use thereof in 1954 was 24,000,000 pounds. Most of this company's inbound tonnage is moved by the Milwaukee, and most of its outbound tonnage moves out over that road under fabrication-in-transit privileges, which are more liberal than those published by the northern lines. The Great Northern, which also serves Sioux Falls, publishes limited transit privileges at that point on westbound and

transcontinental iron and steel traffic when moving over certain routes through Snowden, Mont., or Fort Buford, N. Dak. The tariff covering such tonnage from origin territory east of Chicago provides routes through Sioux Falls on the Great Northern only when the movement into Sioux Falls is by the Illinois Central Railroad Company, [fol. 193] or the Burlington to Sioux City and the Great Northern to Sioux Falls. The witness for this manufacturer testified that these routes are not ordinarily used as it would be necessary, when shipping over the Great Northern to S.P.&S. points, for the company to determine in advance the number of carloads it might ship over this route and then order a sufficient number of carloads of iron and steel routed into Sioux Falls over the Illinois Central or the Burlington-Great Northern routes; that if too many carloads were ordered, the company would lose valuable transit privileges on the unused balances; and that, for all practical purposes, this company, because of the existing rate situation, cannot now ship to points on the S.P.&S. over any route and is thereby, to this extent, handicapped in the sale of its grain bins. One of this company's principal competitors is located at the Twin Cities and is able to ship over either of the northern lines to S.P.&S. points without routing restrictions on its inbound traffic.

The defendants assert, and it is not denied by the complainant, that iron or steel may be routed into Sioux Falls over the Illinois Central or the Burlington-Great Northern, be fabricated thereat, and reshipped under the Milwaukee transit tariff to Pacific coast destinations over the Milwaukee direct or over that carrier in connection with the Union Pacific and the Southern Pacific, and many of the destinations on the latter two carriers are common with the S.P.&S. Thus, it is contended that there would not likely be a surplus of unused transit balances.

Livestock.—A livestock producer, engaged principally in sheep raising at Washtucna, Wash., the site of his winter range, testified in support of the complainant. His testi- [fol. 194] mony is to the effect that sheep must be shifted from winter range to summer range in early May; that he sometimes summer grazes his sheep in the St. Maries area

which is local to the Milwaukee and at the completion of summer grazing, lambs are ready for market. His sheep are transported by the S.P.&S. to the summer range for grazing in transit, and in the autumn, when they are ready for market, they are shipped by rail to Chicago. There are no through rates from Washtucna to Chicago over the S.P.&S. and the Milwaukee, with grazing in transit, and the combination rates applicable thereon increase the freight charges by about $40 per car over the charges that would accrue at the joint through rates sought. The witness estimated that he would market about 10 carloads of lambs in 1954.

Evidence submitted on behalf of the Chicago Producers Commission Association indicates that the volume of sheep and lambs handled by this association annually totals from 1,300 to 1,800 carloads, which are received from many States, including Washington, Idaho, and Oregon, an important production area. This association is interested in greater production of sheep and lambs and the opening up, for that purpose of as many places as possible where feed is available. It has handled livestock produced in the Pacific Northwest for many years. Freight charges are deducted from the proceeds when livestock is sold at a public market, and are assumed by the producer.

There is much unused grazing land on both of the northern lines, as well as on the Milwaukee, and the defendants contend that the privilege of grazing in transit under joint through rates has little or nothing to do with the selection by sheep raisers of the location of summer [fol. 195] ranges. To support this contention, it is shown that in 1954 the Great Northern moved 365 carloads through Spokane for summer grazing, and only 72 of these were from origins from which joint through rates applied to Chicago. Of the remainder, 127 carloads originated on the Great Northern, 158 on the Union Pacific, and 8 on the Milwaukee. In 1954, 599 carloads were shipped from summer-grazing areas on the Great Northern, and transit privileges were used on only 53 of these. It is admitted by the livestock producer at Washtucna that the selection of a summer range is governed by the conditions which he

believes will produce the best lambs rather than the availability of transit arrangements.

Producers of lambs located on the S.P.&S. can now graze in transit at ranges on either of the northern lines at joint through rates to Chicago, whereas those located on either of the northern lines or on the Milwaukee are restricted in so far as transit is concerned to shipments moved over the respective lines of the originating carrier.

Many carloads of hogs are shipped annually from Sioux Falls to the Pacific Northwest. In 1953, there were 189 carloads shipped over the Milwaukee to Seattle, 22 carloads over the North Western-Northern Pacific, and 4 over the Great Northern. In the same year, 394 carloads were shipped to Portland over the North Western-Northern Pacific and the Great Northern. The evidence indicates that there are certain advantages in shipping over each route. Shipments moved out over the North Western or the Great Northern leave Sioux Falls in the late afternoon, and those over the Milwaukee leave about 7 a.m., but there is no comparison of the time in transit over the respective routes or what it would approximate over a route of the Milwaukee-S. P. & S. to Portland.

[fol. 196] On January 12, 1955, the Northern Pacific's train schedules were amended so that shipments from Sioux Falls over the North Western-Northern Pacific route to Seattle and Portland would be handled in about 24 hours less time, and stops for feed and water were reduced from three to two. On and between January 12 and March 31, 1954, there were shipped from Sioux Falls over the North Western-Northern Pacific route 32 carloads to Portland, none to Seattle, and none to Salem, whereas in the same period in 1955, after the schedules were changed, that route handled 48 carloads to Portland, 119 carloads to Seattle, and 14 carloads to Salem. There is also a two-feed route from Sioux Falls to Portland over the Great Northern to Sioux City, thence the Burlington and the Union Pacific.

A representative of an organization composed of shippers and receivers of freight throughout the State of Montana testified that because of the absence of joint through rates in connection with the S.P.&S. and the Milwaukee, his

clients do not have the full benefit of the transportation facilities of the latter. It is their position that from a rate, and service standpoint there should be no different treatment of shippers and receivers of freight located at local points in Montana on the Milwaukee from that accorded those located at points on the northern lines. The testimony of a representative of shippers and receivers of freight in Kansas City was to the effect that under present-day sales and merchandising methods, retailers and wholesale distributors are inclined to keep their inventories as low as possible, and that the present routing restrictions which eliminate stops on the Milwaukee in Montana where the balance of a carload might be destined to points on the S.P.&S. or to points in the East where the traffic originates on the S.P.&S. tend to divert traffic to motor carriers.

[fol. 197] GENERAL DISCUSSION AND CONCLUSIONS

In support of its contentions that the combination rates assailed to or from points on its line, which are common with one or the other of the northern lines, or both, and from and to points on its connections, are unjust and unreasonable, the Milwaukee submitted a number of comparisons showing the differences in such rates and the competitive joint through rates on various commodities. Neither factor of the combination rates is assailed, but the aggregates of such factors are alleged to be unlawful to the extent that they exceed the competitive joint rates. The latter rates are the going rates on the traffic concerned and, except for authorized general increases therein, have been in effect for a long time. Many of these rates have been approved by us. There is no contention by the defendants that any of those rates is below a reasonable level, but in view of our conclusions herein, it is unnecessary to determine whether such rates would be reasonable for application over the routes sought. No rate comparisons were submitted by the Milwaukee in support of its allegation that the combination rates on freight traffic to and from local points on its lines are unreasonable, except on coal to S.P.&S. points from Roundup, previously mentioned.

With respect to the issue under section 15, the facts before us here are in important respects similar to those

considered in the *Western Pacific* case, wherein the Western Pacific alleged that the failure of the defendants therein to join with it in the establishment and maintenance of joint rates between points in California on the line of the Northwestern Pacific Railroad Company, controlled by the Southern Pacific, on the one hand, and eastern defined [fol. 198] groups, on the other hand, over routes in which the Western Pacific would be an intermediate participating carrier, was discriminatory and prejudicial, and that the combination rates between such points over such routes were unreasonable. Therein, division 2 said, at pages 136 and 137:

> In requesting the application of joint rates over its line complainant is not here as a shipper or receiver of traffic but solely as a carrier seeking to participate in traffic which, under the act, belongs in the absence of emergency, to the Northwestern Pacific and Southern Pacific.

The instant complainant likewise is not here as a shipper or receiver of traffic, but solely as a carrier seeking to participate in traffic which the S.P.&S. and the northern lines refuse to relinquish.

The defendants emphasize the fact that the principal motivation of the Milwaukee in filing the instant complaint was to increase its revenues, and they assert that there is no public demand for the routes sought. They contend that shipper support was entirely inspired by Milwaukee solicitation, and that this is shown by the testimony which indicates that only one of the shipper witnesses had made a request for the Milwaukee route prior to the hearing herein. Several of these witnesses admitted that their appearance was the result of Milwaukee solicitation.

The record shows that both the Milwaukee and the S.P.&S. sought to interest the public in this controversy and to inform other persons, especially shippers, as to the merits of their respective views. A number of witnesses stated that they had discussed the controversy with representatives of both sides before appearing to testify. However, there is nothing of record to indicate that these

witnesses, whether for or against the complainant, were [fol. 199] improperly influenced, or that the interest of any of them in the subject matter of this proceeding had been stimulated in any questionable manner.

Since the decision in the *Western Pacific* case, section 15(4) has been amended (in 1940), so that now the prohibition against short-hauling is subject, not only to the exception that such inclusion of lines must not make the through route unreasonably long as compared with another practicable through route which might otherwise be established, but to the additional exception that the short hauling provision may be disregarded where the "through route proposed to be established is needed in order to provide adequate, and more efficient or more economic, transportation." Thus, where, as in the instant proceeding, we are asked to disregard the short-hauling provision, consideration must be given first to the adequacy of the transportation, and second, to the efficiency and economy of the transportation. In *Pennsylvania R. Co.* v. *United States*, 323 U.S. 588, the Supreme Court said that adequacy of transportation relates only to the interest of the shipping public, whereas the expressions "more efficient or more economic" transportation, as used in section 15(4), "may well embrace both shippers' and carriers' interests, * * * that both interests should be considered and a fair balance found". These latter considerations are not determinative unless the existing routes can be found not to provide "adequate" transportation.

As previously stated, there is no contention by the complainant that the present routes of the defendants in connection with the northern lines are not adequate for the traffic involved, and no finding is requested by the com- [fol. 200] plainant to that effect. Neither are we convinced that the testimony in behalf of shippers and receivers is sufficient to require that the through routes and joint rates, as sought by the complainant, be established.

It is said to be the general traffic policy of the carriers serving the Pacific Northwest, including the Milwaukee, not to apply their joint rates via all junctions, but, on the contrary, for each carrier to guard its own long haul, and that there are very few instances where this policy is departed from to permit transiting on another carrier's line at the same rates as apply over the originating carrier's

long-haul route. Reference is made to *West Coast Lumber Mfrs. Asso. v. Tacoma E., R. R. Co.*, 45 I.C.C. 227, wherein the Milwaukee and its subsidiary the Tacoma Eastern Railroad were not required to reestablish joint rates via Tacoma in connection with the Northern Pacific on lumber and forest products destined to points east of the Missouri River; and to *Routing from Points on S., C. D. & P. Ry.*, 142 I.C.C. 250, wherein a proposal to cancel class and commodity rates from origins on the Spokane, Coeur d'Alene & Palouse Railway, at that time operated under a common management and control with the Great Northern, via Spokane in connection with the Milwaukee and the Northern Pacific on traffic destined to or east of the Missouri River cities, was found justified.

Many of the shippers who testified in behalf of the complainant with respect to lumber and forest products stated that they desired wide open, unrestricted routing at competitive joint rates, particularly in connection with transit shipments. While this undoubtedly would be desirable from the shippers' viewpoint, there is no clear showing that it [fol. 201] would be in the public interest or that it is needed to provide adequate and more efficient or more economic transportation. As indicated in footnote 5, *supra*, a full line of joint through rates on these products from all points on the S.P.&S. to all local and some common points on the Milwaukee east of Spokane have been established or approved for application via Spokane. Joint through rates apply from S.P.&S. origins to destinations on the Milwaukee in Wisconsin, Illinois, Indiana, Missouri, substantially all of Iowa, and parts of Minnesota over routes via Spokane, thence either of the northern lines to the Twin Cities, and the Milwaukee beyond. Many of the origins served by the S.P.&S. system are also served by either the Union Pacific or the Southern Pacific, and from these origins joint rates apply via Marengo to most destinations on the Milwaukee and over lake routes beyond to destinations in official territory. In addition, from origins on the Union Pacific and Southern Pacific which, as indicated, include a large number of points on the S.P.&S. system, through routes and joint rates apply to substantially all points in the United States over the Union Pacific to Omaha, or over

the Southern Pacific via Portland or Ogden and the Union Pacific, or over the Southern Pacific via El Paso, Tex., and connections beyond.

As indicated, there is open routing on corn from Milwaukee origins in the Midwest to S.P.&S. destinations over the Milwaukee to Terry, thence the Northern Pacific and the S.P.&S., and the S.P.&S. is willing to establish joint rates on wheat from origins on the Milwaukee in Montana to Astoria.

The production of fruits and vegetables at points served exclusively by the S.P.&S. is very small as compared with the total production in Oregon and Washington. In 1953, [fol. 202] the carloads shipped from such origins on the S.P.&S. and those originated in Oregon and Washington were, respectively, apples, 44 and 19,839 carloads; cherries, zero and 1,179 carloads; pears, 244 and 9,265 carloads; potatoes, zero and 18,513 carloads; and onions, zero and 3,997 carloads. As indicated, joint rates are now in effect on fruits and vegetables from origins on the S.P.&S. to Mitchell and Sioux City over the lines of that carrier to Spokane, the Northern Pacific to Jamestown, the Midland Continental to Edgeley, and the Milwaukee beyond. As to coal from Roundup, the S.P.&S. is willing to establish the rates sought if it can be shown that there will be a movement to points on its lines.

There appears to be no real need for through routes and joint rates in connection with the Milwaukee via Spokane to destinations on the S.P.&S. on church and school furniture and equipment and theatre equipment, since numerous routes are now available in connection with the northern lines, and shipments may now be stopped at points on the Milwaukee east or west of Spokane for partial unloading when the remainder of a carload is destined to a point served by the Milwaukee. Adequate routing also appears to be available in connection with westbound shipments of agricultural implements and grain bins.

Shipments of sheep from origins on the S.P.&S. may now be stopped for grazing in transit on either the Great Northern or the Northern Pacific at joint through rates, and the record is clear that the selection of a grazing area is not

controlled by the presence or absence of grazing-in-transit privileges.

[fol. 203] The record does not support a finding of undue preference and prejudice between shippers or localities. In a recent decision in *Union Pacific R. Co.* v. *United States*, 132 F. Supp. 72, a three-judge court stated, at page 80:

> * * * The prohibition of section 3(1) is intended to prevent a carrier from giving preferences or advantages, over which the carrier has control, to one of the entities named and not to another. It does not apply to a situation such as this where the comparison of preferences or advantages or prejudices and disadvantages is between the entities named when they are located on the lines of different carriers not acting in concert or collusion. * * *

In support of this statement, reference was made to *Central R. Co. of New Jersey* v. *United States*, 257 U.S. 247. The Supreme Court upheld the three-judge court's decision, in *Denver & Rio Grande Western R. Co.* v. *Union Pacific R. Co.*, 351 U.S. 321, but made no mention of the above observation. It stated, at page 335, that since our order was justified under sections 15(1), 15(3), and 15(4), there was no occasion to consider contentions raised under sections 3(1) and 3(4). Moreover, the evidence before us is not convincing that any shipper or locality is disadvantaged by reason of the absence of the routes and rates sought in such a manner or to the extent necessary to support a finding of unlawfulness under section 3(1) of the act.

We conclude:

1. That the S.P.&S. system is operated under a common management and control with, and that its traffic policy is controlled by, the Great Northern and the Northern Pacific, and therefore must be considered as a part of the latter carrier systems.

2. That the failure and refusal of the S.P.&S. to join in the establishment of through routes and joint rates via Spokane in connection with the Milwaukee and its connections, the same as apply via Spokane in connection with the

[fol. 204] northern lines and their connections, does not result in discrimination against the Milwaukee, nor in undue preference or prejudice between shippers or localities.

3. That it is not shown to be necessary or desirable in the public interest, in order to provide adequate and more efficient or more economical transportation, to require the establishment of through routes and joint rates in connection with the S.P.&S. system and the Milwaukee and its connections via Spokane the same as apply in connection with the S.P.&S. system and the northern lines and their connections via Spokane.

Upon appropriate application therefor, the S.P.&S. will be expected, in accordance with its stipulation, to establish through routes and joint rates with the Milwaukee on coal and wheat from origins on the Milwaukee in Montana.

An order will be entered dismissing the complaint.

Commissioner Hutchinson concurs in the result.

Commissioners Freas, Winchell and Murphy, being necessarily absent, did not participate in the disposition of this proceeding.

[fol. 205]

APPENDIX A

The following shows the territorial application of joint through rates on various commodities and classes of traffic via Spokane, Wash., in connection with the SP&S and the northern lines, between points on the SP&S system lines and points generally east of Spokane on the Great Northern and the Northern Pacific or their connections:

APPLICABLE ON	TERRITORIAL APPLICATION	
	TO	FROM
General commodities	Points on the S.P.&S. system lines	Eastern defined territories as described in TCFB Territorial Directory No. 5, Agent Prueter's I.C.C. No. 1548, also points in Canada.
General commodities	Eastern defined territories as described in TCFB Territorial Directory No. 5, Agent Prueter's I.C.C. No. 1548, also points in Canada	Points on the S.P.&S. system lines.
Lumber, shingles and other forest products	Points in Eastern Canada	Points on the S.P.&S. system lines.
Lumber, shingles and other forest products	Eastern United States points named in Agent Prueter's I.C.C. No. 1511	Points on the S.P.&S. system lines.
Lumber, shingles and other forest products	Points in North Dakota, South Dakota, Nebraska, Kansas, Texas, and others named in Agent Prueter's I.C.C. No. 1474	Points on the S.P.&S. system lines.
Lumber, shingles and other forest products	Points in Minnesota, Wisconsin, Iowa, Illinois, etc., named in Agent Prueter's I.C.C. No. 1545	Points on the S.P.&S. system lines.

APPLICABLE ON	TERRITORIAL APPLICATION	
	TO	FROM
Wool and mohair	Boston, Clinton, Mass., Baltimore, Md., Jamestown, N. Y., Newport News and Norfolk, Va., Philadelphia and Pittsburgh, Pa., Cleveland and Piqua, Ohio, Columbia City and La Porte, Ind., Eaton Rapids, Mich., Chicago, Ill., Louisville, Ky., Kansas City, Mo., Milwaukee, Wis., and St. Louis, Mo., and points taking the same rates	Points on the S.P.&S. system lines.
	BETWEEN	AND
Oil cake, vegetable oils and related articles	Points on the S.P.&S. system lines	Points in Arkansas, Illinois, Louisiana, Mississippi, Missouri, Oklahoma, Tennessee and Texas.
Class Rates	Points on the S.P.&S. system lines	Eastern defined territories, as described in TCFB Territorial Directory No. 5, Agent Prueter's I.C.C. No. 1548.
Fresh fruits and vegetables	Points on the S.P.&S. system lines	Eastern defined territories as described in TCFB Territorial Directory No. 5, Agent Prueter's I.C.C. No. 1548, and also to points in Canada.
Grain and grain products, hay, seeds, animal or poultry feeds	Points on the S.P.&S. system lines	Eastern defined territories as described in TCFB Territorial Directory No. 5, Agent Prueter's I.C.C. No. 1548, and also to points in Canada.
Livestock	Points on the S.P.&S system lines	Points in North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, Texas, Minnesota, Iowa, Missouri, Arkansas, Louisiana, Michigan, Wisconsin, Illinois, Indiana, Tennessee and Mississipp

[fol. 207]

Docket No. 31466
Appendix A - Sheet 3

APPLICABLE ON	TERRITORIAL APPLICATION	
	BETWEEN	AND
General commodities	Points on the S.P.&S. system lines	Points in Washington and Idaho, generally east of Spokane, Wash.
Class rates; general commodities	Points on the S.P.&S. system lines	Points in Montana, North Dakota, South Dakota, generally west of the Missouri River.
Grain and grain products	Points on the S.P.&S system lines	Points in Washington and Idaho, generally east of Spokane, Wash.
Potatoes, onions and other vegetables	Points on the S.P.&S. system lines	Points in Washington and Idaho, generally east of Spokane, Wash.
Hay and straw	Points on the S.P.&S. system lines	Points in Washington and Idaho, generally east of Spokane, Wash.
Grain and grain products	Points on the S.P.&S. system lines	Points in Montana, North Dakota, South Dakota, generally west of the Missouri River.
	TO	FROM
Petroleum and petroleum products	Points in Washington and Idaho, generally east of Spokane, Wash.	Portland, Willbridge and Linnton, Oreg., Pasco and East Pasco, Wash.
Powder and high explosives	Points in Washington and Idaho, generally east of Spokane, Wash.	Portland and Trojan, Oreg.
	BETWEEN	AND
Fresh fruits and vegetables	Points on the S.P.&S. system lines	Points in Washington and Idaho, generally east of Spokane, Wash.

Docket No. 31466
Appendix A - Sheet 4

APPLICABLE ON	TERRITORIAL APPLICATION	
	BETWEEN	AND
Lumber, shingles and other forest products	Points on the S.P.&S. system lines	Points in Washington and Idaho, generally east of Spokane, Wash.
	TO	FROM
Wool and mohair	Portland, Oreg.	Points in Washington, generally east of Spokane, Wash., also Idaho and Montana.
	BETWEEN	AND
Fresh fruits and vegetables	Points on the S.P.&S. system lines	Points in Montana, North Dakota, South Dakota, generally west of the Missouri River.
Lumber, shingles and other forest products	Points on the S.P.&S. system lines	Points in Montana, North Dakota and South Dakota, generally west of the Missouri River.
Clams rates	Points on the S.P.&S. system lines	Points in Washington and Idaho, generally east of Spokane, Wash.
	TO	FROM
Livestock	Portland, North Portland, Oreg., and points taking same rates	Points in Washington and Idaho, generally east of Spokane, Wash.
	BETWEEN	AND
Livestock	Points on the S.P.&S. System lines	Points in Montana.

[fol. 209]

APPLICABLE ON	TERRITORIAL APPLICATION	
	TO	FROM
Paper and paper articles	Points in Washington and Idaho, generally east of Spokane, Wash.	Points on the S.P.&S. system lines.
Salt	Stations in Washington and Idaho, generally east of Spokane, Wash., also Montana	Portland, Oreg.
General commodities LCL	Points in Washington and Idaho, generally east of Spokane, Wash.	Portland, Oreg.; and Vancouver, Wash.
General commodities LCL	Points in Montana, North Dakota and South Dakota, generally west of the Missouri River.	Portland, Oreg., and Vancouver, Wash.
Grain and grain products	Points on the S.P.&S. system lines	Sioux City, Iowa (Routing: The Milwaukee, to Terry, Mont.; Northern Pacific to Pasco or Spokane, Wash., and S.P.&S.)
Gypsum, plaster and related articles	Points on the S.P.&S. system lines	Hanover, Mont. (Routing: The Milwaukee and Great Northern to Spokane, Wash., and S.P.&S.) Heath, Mont. (Routing: The Milwaukee to Lewiston, Mont.; Great Northern to Spokane, Wash., and S.P.&S.)
Ore, concentrates and smelter products	Portland, Oreg.	Butte, Anaconda and Black Eagle, Mont.
Grain and grain products	Points on the S.P.&S. system lines	Sioux City, Iowa.

APPLICABLE ON	TERRITORIAL APPLICATION	
	BETWEEN	AND
Ore, concentrates and smelter products	Butte and Anaconda, Mont.	East Portland, Portland and St. Johns, Oreg.
	TO	FROM
Grain and grain products	Points on the S.P.&S. system lines	Sioux City, Iowa
	BETWEEN	AND
Sand and gravel (distance rates)	Points on S.P.&S. in Washington	Points in Washington.

[fol. 211]

APPENDIX B

The following shows the territorial application of the present joint through rates on various commodities and classes of traffic via Spokane, Wash., in connection with the SP&S and the Milwaukee, between points on the SP&S system lines and points east of Spokane on the Milwaukee or its connections:

APPLICABLE ON	TERRITORIAL APPLICATION	
	FROM	TO
Lumber, shingles and other forest products	Points on the S.P.&S. system lines, except the Santiam branch of the Oregon Electric extending from Albany, Oreg., to Dollar and Foster, Oreg.	Points on the Milwaukee in South Dakota east of Mobridge, North Dakota except Linton, Edgeley and Fargo, also to Omaha, Nebr.
Lumber, shingles, and other forest products	Points on the S.P.&S. system lines, except the Santiam branch	Points served exclusively by the Milwaukee in Minnesota, Wisconsin, Iowa, Illinois (except the Terre Haute branch-line), and Missouri; also some points common with other lines generally applicable through intermediate application of rate to local points beyond.
General commodities, export	Points in the United States generally east of the Missouri River and States of Wyoming, Colorado and New Mexico	Astoria, East Portland, Linnton, Portland, St. Johns, Oreg., and Vancouver, Wash., when for export.
General commodities, import	Astoria, East Portland, Linnton, Portland, St. Johns, Oreg., and Vancouver, Wash.	Points in the United States generally east of the Missouri River and States of Wyoming, Colorado, and New Mexico, also limited application to Montana.
	BETWEEN	AND
General commodities	Portland and East Portland, Oreg.	Stations on the Milwaukee in Washington and Idaho, Rathdrum, Idaho to Metaline Falls, Wash., inclusive.

APPLICABLE ON	TERRITORIAL APPLICATION	
	FROM	TO
Pipe, sewer, and related articles	Dishman, Wash.	Bend, Oreg.
Plaster aggregate (Perlite)	Dent, Oreg.	Metaline Falls, Wash.
Wallboard	St. Helens, Oreg.	Dishman, Wash.
Petroleum and its products	East Pasco, Wash.	Worley, Spirit Lake, St. Maries, Arlno, and Pocono, Idaho, and Greenacres and Metaline Falls, Wash.
Cement, portland	Metaline Falls, Wash.	SP&S system lines, points west of Spokane, Wash., to and including Portland, Oreg., and points south of Wishram, Wash., to and including Bend, Oreg.
Lumber and other forest products	Stations on the S.P.&S. system lines	Mobridge, S. Dak.
Lumber and other forest products	*Vernonia, Oreg.	Points on the Milwaukee, Mobridge, S. Dak., and west thereof to and including Missoula, Mont., and also to W.S.S.&Y.P.Ry. points on the White Sulphur Springs & Yellowstone Park Railway Company.

	BETWEEN	AND
Class Rates	Portland and East Portland, Oreg., and Vancouver, Wash.	Points on the Milwaukee, Grand Junction, Idaho, to and including Metaline Falls, Wash.
**Live stock	Points on the S.P.&S. system lines	Stations on O.W.ST.P.&P. R.R. in Washington east of Spokane, Idaho and Montana.

[fol. 213]

Docket No. 31466
Appendix B - Sheet 3

PPLICABLE ON	TERRITORIAL APPLICATION	
	FROM	TO
laster and plaster articles	C.M.ST.P.&P. R.R. Hanover, Mont. Heath, Mont.	Oregon Electic stations Millsboro to Eugene, Oreg. inclusive. Indices Nos. 50 to 660, inclusive of Agent A.P.Leland's I.C.C. A-33.
troleum and s-products	C.M.ST.P.& P.R.R. Great Falls, Mont.	S P.& S.Ry.ctations Hooper to Goldendale, Wash., inclusive. Indices Nos.75 to 530, inclusive, of Agent A.P.Leland's I.C.C. A-33.
troleum ude oil	Baker, Mont.	Willbridge, Oregon
	BETWEEN	AND
Sand and avel istance rates)	Points on the S.P.& S. system lines in Washington	Points on the Milwaukee in Washington

Published in compliance with the order entered October 19, 1932, in West Coast Lumbermen's Assn. v. Big Fork & I.F. Ry.Co., 188 I.C.C. 471.

Published in compliance with the order entered June 8,1931, in Livestock-Western District Rates, 176 I.C.C.1.

Applicable on intrastate traffic only.

[fol. 214]

ORDER

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 10th day of May, A. D. 1957.

No. 31466

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY,

v.

SPOKANE, PORTLAND & SEATTLE RAILWAY COMPANY et al.

This proceeding being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been made, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is ordered, That the complaint in this proceeding be, and it is hereby, dismissed.

By the Commission.

HAROLD D. McCOY,
Secretary.

[SEAL]

[fol. 215] [File endorsement omitted]

BEFORE THE INTERSTATE COMMERCE COMMISSION

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 24th day of October, A. D. 1957.

58-C-77

Owen Clarke, Richard F. Mitchell, Anthony F. Arpaia, Howard G. Freas, Kenneth H. Tuggle, John H. Winchell, Everett Hutchinson, Rupert L. Murphy, Robert W. Minor, Laurence K. Walrath, Donald P. McPherson, Jr., Commissioners.

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY v. SPOKANE, PORTLAND & SEATTLE RAILWAY COMPANY ET AL.

No. 31466.

ORDER DENYING PETITIONS FOR REARGUMENT AND RECONSIDERATION—October 24, 1957

Petitions of complainant and Secretary of Agriculture for reargument and reconsideration in the above-entitled proceeding, denied; Commissioner Freas not participating.

[fol. 216] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

No. 58-C-77

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, Plaintiff,

v.

UNITED STATES OF AMERICA; INTERSTATE COMMERCE COMMISSION; SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY; GREAT NORTHERN RAILWAY COMPANY; and NORTHERN PACIFIC RAILWAY COMPANY, Defendants,

EZRA TAFT BENSON, Secretary of Agriculture of the United States; THE NATIONAL LIVE STOCK PRODUCERS ASSOCIATION; THE AMERICAN NATIONAL CATTLEMEN'S ASSOCIATION; THE NATIONAL WOOLGROWERS ASSOCIATION and THE CHICAGO PRODUCERS COMMISSION ASSOCIATION, Intervening Plaintiffs,

OREGON ELECTRIC RAILWAY COMPANY; OREGON TRUNK RAILWAY; CHICAGO AND NORTHWESTERN RAILWAY COMPANY; CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY; CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY; and THE MINNEAPOLIS AND ST. LOUIS RAILWAY COMPANY, Intervening Defendants.

[fol. 217]

ORDER FOLLOWING PRE-TRIAL CONFERENCE
HELD DECEMBER 15, 1959—January 8, 1960

At a pre-trial conference in the above-entitled cause held on December 15, 1959, in Judge Tehan's Courtroom, Room 390 Federal Building, Milwaukee, Wisconsin, the following appearances were entered:

Plaintiff, Chicago, Milwaukee, St. Paul and Pacific Railroad Company, by R. K. Merrill and Rodger S. Trump;

Intervening plaintiffs, Department of Agriculture, by Joseph E. Quin; American National Cattlemen's Asso-

ciation, National Woolgrowers Association, and Chicago Producers Commission Association, by Lee J. Quasey;

Defendants, United States of America and Interstate Commerce Commission, by C. H. Johns and Edward G. Minor, United States Attorneys; Spokane, Portland and Seattle Railway Company, Great Northern Railway Company, and Northern Pacific Railway Company, by John S. Best, L. E. Torinus, and Fletcher Rockwood;

Intervening defendants, Chicago & North Western Railway Co., Minneapolis and St. Louis Railway Company, and [fol. 218] Chicago, Rock Island and Pacific Railroad Company, by E. H. Borgelt; Chicago, Burlington & Quincy Railroad Company, by James A. Gillen; Oregon Electric Railway Company, and Oregon Trunk Railway, by John S. Best, L. E. Torinus and Fletcher Rockwood.

It was announced that National Livestock Producers Association, an intervening plaintiff, would not actively participate in the trial of this cause.

It was stipulated that at the hearing of this cause on the merits, no oral testimony will be offered or received, nor will any documents or papers other than those hereinafter referred to, be offered or received in evidence, and it is so ordered.

It is further ordered the hearing of this cause on the merits will be held in the Court Room of the United States District Court for the Eastern District of Wisconsin (Room 390), Federal Building, Milwaukee, Wisconsin, on February 18, 1960, commencing at 9:30 o'clock a.m. The plaintiffs and intervening plaintiffs shall have a total of not exceeding two (2) hours to present their case. The defendants and intervening defendants shall have a total [fol. 219] of not exceeding two (2) hours to present their case. The plaintiffs shall have the right to open and close the argument. The division of time between plaintiff and intervening plaintiffs, and between the various defendants themselves and between defendants and intervening defendants, shall be by agreement of the parties concerned. In case of a failure to so agree, the Court will determine the amount of time for argument by each such party.

Upon motion of Attorney R. K. Merrill, the record of proceedings before the Interstate Commerce Commission which was filed with the Clerk of this Court on October 7, 1958, was received into evidence.

On motion of Attorney Fletcher Rockwood, there was received into evidence a compilation of material under one binding, filed with the Clerk of this Court on December 16, 1958, containing, *inter alia*, certified copy of the order of the Interstate Commerce Commission denying petitions of plaintiff and the Department of Agriculture for a reconsideration and reargument; copies of exceptions and replies by various railroads and employees of railroads; and a certified copy of order of the Interstate Commerce [fol. 220] Commission which was entered on October 24, 1957, Commission's Docket No. 31466.

It was agreed that the principal issues to be litigated in this cause and decided by this Court are:

1) Did the Commission err in finding and concluding that with certain exceptions there are no through routes between points on the S. P. & S. System, on the one hand, and, on the other, points throughout the United States generally east of Spokane and Canada in connection with the Milwaukee road via Spokane?

2. Did the Commission err in finding and concluding that the S. P. & S. System is operated in conjunction and under a common management and control with the northern lines within the meaning of Section 15(4) of the Interstate Commerce Act?

3. Did the Commission err in finding and concluding that it is not necessary or desirable in the public interest in order to provide adequate and more efficient or more economic transportation to require the establishment of through routes and joint rates with reference to certain commodities in connection with the S. P. & S. System and [fol. 221] the Milwaukee and its connections via Spokane the same as apply in connection with the S. P. & S. System and the northern lines and their connections via Spokane?

4. Did the Commission err in finding and concluding that the refusal of the S. P. & S. System to participate

in joint rates with the Milwaukee Road and its connections similar to those in effect with the northern lines and their connections was not a violation of Sections 1(4), 3(1), or 3(4) of the Act?

Dated at Milwaukee, Wisconsin, this 8th day of January, A.D., 1960.

F. Ryan Duffy, Roland E. Tehan, K. P. Grubb.

[fol. 223] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

Civil Action No. 58-C-77

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, Plaintiff,

EZRA TAFT BENSON, Secretary of Agriculture of the United States; NATIONAL LIVESTOCK PRODUCERS ASSOCIATION; AMERICAN NATIONAL CATTLEMEN'S ASSOCIATION; NATIONAL WOOL GROWERS ASSOCIATION; and CHICAGO PRODUCERS COMMISSION ASSOCIATION, Intervening Plaintiffs,

v.

UNITED STATES OF AMERICA; INTERSTATE COMMERCE COMMISSION; SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY; GREAT NORTHERN RAILWAY COMPANY; and NORTHERN PACIFIC RAILWAY COMPANY, Defendants,

OREGON ELECTRIC RAILWAY COMPANY; OREGON TRUNK RAILWAY; CHICAGO AND NORTH WESTERN RAILWAY COMPANY; CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY; CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY; and THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY, Intervening Defendants.

OPINION—March 25, 1960

Before HASTINGS, Chief Judge, U. S. Court of Appeals, and TEHAN, Chief Judge, and GRUBB, District Judge.

GRUBB, District Judge. This action was brought by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company against the United States of America, the Interstate Commerce Commission, the Spokane, Portland and Seattle Railway Company, the Great Northern Railway Company, and the Northern Pacific Railway Company under 28 United States Code, Sections 1336, 1398, 2284, and 2321-2325, inclusive, to set aside and enjoin an order of the Interstate Commerce Commission dated May 10, 1957.

[fol. 224] On February 16, 1954, the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (hereinafter referred to as the "Milwaukee") filed with the Interstate Commerce Commission a complaint which, as amended, alleged that the refusal of the Spokane, Portland and Seattle Railway Company (hereinafter referred to as the "S. P. & S.") to establish through routes and joint through rates in connection with the complainant applicable to freight traffic of whatsoever nature moving between points on the S. P. & S. on one hand and points throughout the United States on the other via the City of Spokane resulted in violations of Sections 1(4), 3(1), and 3(4) of the Interstate Commerce Act.

The complaint then asked the Commission to require the S. P. & S. to establish through routes and joint rates via Spokane in connection with the complainant applicable to all freight traffic where such do not already exist via the aforementioned gateway on the same basis as may now or hereafter be available from and to S. P. & S. points over routes through the Spokane gateway in connection with the Great Northern Railway Company and the Northern Pacific Railway Company (hereinafter referred to collectively as the "Northern Lines" and separately as the "Great Northern" and the "Northern Pacific").

The Commission rejected the claims of the complainant and denied all of the relief sought. At page 498 of its report (300 I.C.C. 453), the Commission found:

> "1. That the S. P. & S. system is operated under a common management and control with, and that its traffic policy is controlled by, the Great Northern and the Northern Pacific, and therefore must be considered as a part of the latter carrier systems.

"2. That the failure and refusal of the S. P. & S. to join in the establishment of through routes and joint rates via Spokane in connection with the Milwaukee and its connections, the same as apply via Spokane in connection with the northern lines and their connections, does not result in discrimination against the Milwaukee, nor in undue preference or prejudice between shippers or localities.

"3. That it is not shown to be necessary or desirable in the public interest, in order to provide adequate and more efficient or more economical trans- [fol. 225] portation, to require the establishment of through routes and joint rates in connection with the S. P. & S. system and the Milwaukee and its connections via Spokane the same as apply in connection with the S. P. & S. system and the northern lines and their connections via Spokane."

The Commission further found that with certain limited exceptions, there are no existing through routes as that term is used in the Interstate Commerce Act in connection with the S. P. & S. and the Milwaukee via Spokane.

The S. P. & S. is a common carrier by railroad incorporated under the laws of the State of Washington. It owns all of the capital stock of the Oregon Electric Railway Company and all of the capital stock, except qualifying shares, of the Oregon Trunk Railway. Collectively the three railroads are known as the Spokane, Portland and Seattle Railway System (hereinafter referred to as the "S. P. & S. System").

The S. P. & S. System lines lie entirely within the States of Oregon and Washington, and the eastern terminus of its tracks is Spokane, Washington. At that point physical track connections with the Milwaukee, Great Northern, and Northern Pacific are available. The lines of the S. P. & S. and its subsidiaries approximate 950 miles in length. The Northern Lines each own 50 percent of the capital stock and outstanding bonds of the S. P. & S.

The Milwaukee is a common carrier by railroad incorporated under the laws of the State of Wisconsin. It

operates approximately 10,600 miles of railroad in the States of Washington, Idaho, Montana, North Dakota, South Dakota, Nebraska, Minnesota, Iowa, Missouri, Michigan, Wisconsin, Illinois, and Indiana. Generally speaking it might be said that its lines serve the Pacific Northwest on the one hand and the Middle West on the other. Although it does serve Spokane, the main line of its Pacific coast extension bypasses that point.

The Northern Pacific and the Great Northern are both common carriers by railroad and are incorporated under [fol. 226] the laws of the States of Wisconsin and Minnesota, respectively. Each operates through the northern tier of States between the North Pacific coast on the west and Minneapolis and St. Paul and the head of the Great Lakes on the east. Spokane is on the main transcontinental routes of each of the Northern Lines.

The parties have agreed that the principal issues in this case are as follows:

1. Did the Commission err in finding and concluding that the S. P. & S. System is operated in conjunction and under a common management and control with the Northern Lines within the meaning of Section 15(4) of the Interstate Commerce Act?

2. Did the Commission err in finding and concluding that with certain exceptions there are no through routes between points on the S. P. & S. System on the one hand and, on the other, points throughout the United States generally east of Spokane and Canada in connection with the Milwaukee via Spokane?

3. Did the Commission err in finding and concluding that it is not necessary or desirable in the public interest in order to provide adequate and more efficient or more economic transportation to require the establishment of through routes and joint rates with reference to certain commodities in connection with the S. P. & S. System and the Milwaukee and its connections via Spokane the same as apply in connection with the S. P. & S. System and the Northern Lines and their connections via Spokane?

4. Did the Commission err in finding and concluding that the refusal of the S. P. & S. System to participate in

joint rates with the Milwaukee and its connections similar to those in effect with the Northern Lines and their connections was not a violation of Sections 1(4), 3(1), or 3(4) of the Act?

In respect to the first issue, the power of the Commission to establish through routes and joint rates under Section 15(3) of the Interstate Commerce Act is limited by Section [fol. 227] 15(4). The pertinent portions of these statutes read as follows:

> Section 15(3): "The Commission may, and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing upon complaint or upon its own initiative without complaint, establish through routes, joint classifications, and joint rates, fares, or charges, applicable to the transportation of passengers or property by carriers subject to this part, or by carriers by railroad subject to this part and common carriers by water subject to part III, or the maxima or minima, or maxima and minima, to be charged, and the divisions of such rates, fares, or charges as hereinafter provided, and the terms and conditions under which such through routes shall be operated. * * *"

> Section 15(4): "In establishing any such through route the Commission shall not (except as provided in Section 3, and except where one of the carriers is a water line) require any carrier by railroad, without its consent, *to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith, which lies between the termini of such proposed through route*, (a) unless such inclusion of liens would make the through route unreasonably long as compared with another practicable through route which could otherwise be established, or (b) unless the Commission finds that the through route proposed to be established is needed in order to provide adequate, and more efficient or more economic, transportation: * * *." (Emphasis added.)

It is the contention of the plaintiff that as the extreme eastern terminus of the lines of the S. P. & S. System is Spokane, the establishment of the through routes and joint through rates sought via that point would not deprive the S. P. & S. of any portion of its line haul, and that, therefore, the provisions of Section 15(4) are not applicable. On the other hand, the S. P. & S. and the Northern Lines contend that the former railroad is operated in conjunction with and under the common management and control of the latter railways and that if the plaintiff prevails, the Northern Lines, in conjunction with the S. P. & S., would be "short-hauled" in contravention of the Act.

The first matter considered by the Commission in regard to the issue of common management and control was the factual relationship between the S. P. & S. and the Northern Lines. Without repeating the detailed findings of fact of the Commission (see pages 463-467 of 300 I.C.C. 453), it can be fairly stated that while neither the Northern [fol. 228] Pacific nor the Great Northern can individually control the S. P. & S., the Northern Lines certainly can and do collectively (or jointly) control their subsidiary including its traffic policy.

The question presented then is whether joint control by two railroads over a third railroad falls within the long haul protection of Section 15(4). In this latter respect there is no question but that the language of the statute is framed in the singular, and, therefore, such a situation does not fall within the precise wording of the Act.

The plaintiff contends that such joint or collective management and control is not sufficient to invoke the long haul protection of Section 15(4) for "control" as used in that statute must be construed as complete or dominating legal control. Such a contruction would, of course, limit the long haul protection of Section 15(4) to situations where a single railroad owns at least a majority of the stock of a subsidiary railroad.

In support of its contention the plaintiff points to the legislative history of the Interstate Commerce Act and specifically to the enactment of Section 1(3)(b) in 1940. This section reads as follows:

"For the purposes of sections 5, 12(1), 20, 204(a)(7), 210, 220, 304(b), 310, and 313 of this Act, where reference is made to control (in referring to a relationship between any person or persons and another person or persons), such reference shall be construed to include actual as well as legal control, whether maintained or exercised through or by reason of the method of or circumstances surrounding organization or operation, through or by common directors, officers, or stockholders, a voting trust or trusts, a holding or investment company or companies, or through or by any other direct or indirect means; and to include the power to exercise control."

The Congressional purpose in enacting this statute was to make applicable to specifics sections of the Act the Supreme Court's interpretation in *Rochester Telephone Corp. v. United States*, 307 U.S. 125, of the term "control" as used in Section 2 of the Communications Act. In. H. [fol. 229] Rep. 2832, 76th Cong., 3d Sess., the joint Senate-House Conference Committee made the following comments in regard to this amendment of the Act:

"This subsection inserts in paragraph (3) of section 1 of the Interstate Commerce Act a definition of 'control' which will apply in certain specified sections of the act where that term is used in referring to a relationship between any person or persons and another person or persons. Since the term 'person' is defined to include artificial as well as natural persons, the definition of control will cover relationships between corporations, companies, associations, etc.

"The definition of control was made to apply only in the specified sections because it was thought undesirable to make any change in the interpretation of present law in certain other provisions of the act, notably section 1(1)(a) and section 15(4). The application of this definition of control will in most cases be in connection with the use in the sections to which it applied of the phrase 'controlling, controlled by, or under common control with' a carrier. This phrase has been used because it has recently had the benefit

of interpretation by the Supreme Court in the case of *Rochester Telephone Corporation* v. *United States*, * * *."

The plaintiff argues that since this broader definition of "control" was not applied to Section 15(4), Congress did not intend to extend the protection of Section 15(4) to a situation where two or more railroads jointly manage and control a third. The weakness of such a contention is (1) it is clear that Congress did not have such a situation in mind when it considered this legislation, and (2) Congress has expressly set out the reason it did not broaden the scope of the word "control" in Section 15(4).

As stated in the Committee report, Section 1(3)(b) was enacted to conform the definition of "control" as used in certain sections of the Interstate Commerce Act to the interpretation placed upon it in the *Rochester Telephone Corporation* decision. In that case the question considered was simply whether a single stockholder with substantial but not majority stock holdings could be said to be in control of a corporation either directly or indirectly. The situation in the present case where two railroads each own 50 per cent of the outstanding stock of a third railroad and obviously exercised joint control is not even analogous to the facts of the *Rochester Telephone Corporation* case. [fol. 230] In our opinion the significant fact in the enactment of Section 1(3)(b) is not the express exception of Section 15(4) from the broadened definition of "control" but the reason given therefor—that Congress thought it "undesirable to make any change in the interpretation" of Section 15(4). The interpretation so referred to resides in the decisions of the Interstate Commerce Commission prior to the year 1940 which clearly show that the Commission would interpret the phrase "under common management or control" to include a joint ownership situation such as we have in the instant case when such a case was presented to it.

In *Blackshear Mfg. Co.* v. *Atlantic Coast Line R. Co.*, 87 I.C.C. 654, a rate-making case not involving Section 15(4), the following statement is found:

"It should be understood that where the term 'carriers under the same management and control' is used

in this report, it refers to carriers generally controlled through ownership, lease, or otherwise to the extent of controlling traffic policy, even though separate corporate entity may be maintained."

In subsequent rate cases the Commission continued to use control of traffic policy as its criterion in judging whether railroads should be considered under the same management and control for rate-making purposes. *Humbard Construction Co.* v. *Southern Ry. Co.*, 161 I.C.C. 38; *Livestock To, From, and Between Points in the Southeast*, 91 I.C.C. 292; *Raleigh Freight Traffic Bureau* v. *A.C.L. R.R. Co.*, 107 I.C.C. 156; *Justice Co.* v. *Holton I-U Ry. Co.*, 153 I.C.C. 673; *Rates on Chert, Clay, Sand and Gravel Within Georgia*, 197 I.C.C. 215; and *Roth Blum Packing Co.* v. *Southern Pacific Co.*, 204 I.C.C. 93.

There are also a number of Interstate Commerce Commission decisions in which that body has applied the *Blackshear* definition of management and control to Section 15(4) cases where the long haul protection of that statute has been invoked and common management and control was an issue. *Alabama T. & N. R. Corp.* v. *Southern Ry. Co.*, 148 I.C.C. 708, and *Georgia & F. R.* v. *Atlantic Coast Line R. Co.*, 191 I.C.C. 489.

[fol. 231] In addition to these cases involving Section 15(4), the *Blackshear* definition of management and control was also used in a case involving discrimination under Section 3(4) of the Act. *Seaboard Air Line Ry. Recs.* v. *Carolina & Northwestern Ry. Co.*, 204 I.C.C. 416. Although not a Section 15(4) case, the decision is nonetheless important for the Commission recognized that retention of the long haul by railroads under common management and control as defined in the *Blackshear* case was not a violation of Section 3(4). The plaintiff has conceded that there can be no violation of Section 3(4) if the defendant railroads are under common management or control as prescribed in Section 15(4).

In another line of Interstate Commerce Commission decisions, the Commission has held that for rate-making purposes one railroad can be jointly managed and controlled by two other independent railroads. *Russ Market Co.* v. *Northwestern Pacific R. Co.*, 171 I.C.C. 117; *Des*

Moines Union Railway Switching, 237 I.C.C. 631; *Erikson v. Ann Arbor R.R. Co.*, 182 I.C.C. 374; *Pacific Lumber Co. v. Northwestern Pacific R. Co.*, 51 I.C.C. 738; and *Roth Blum Packing Co. v. Southern Pacific Co.*, 204 I.C.C. 93.

In this respect it might also be noted that the Commission has commented in a number of decisions that the S. P. & S. for rate making purposes must be considered as part of the Northern Lines rather than an independent railroad. *Portland Chamber of Commerce v. Oregon & Nav. Co.*, 19 I.C.C. 265; *City of Astoria v. S. P. & S.*, 38 I.C.C. 16; *Inland Empire Shippers League v. Director General*, 59 I.C.C. 321; *West Coast Lumbermen's Association v. Chicago, Milwaukee, St. Paul & Pacific Railroad Co.*, 129 I.C.C. 363; *S. P. & S. Railway Company & Oregon Trunk*, 41 I.C.C. Valuation Reports 1; *Pillsbury-Astoria Flour Mills Co. v. Great Northern Railway Co.*, 198 I. C. C. 642; and *Helix Milling Co., Inc. v. Great Northern Ry. Co.*, 287 I.C.C. 77.

In the first case cited the Commission stated at page 283:

> "So far as these proceedings are concerned, we believe this road (S.P.&S.) must properly be considered a part of the Northern Pacific and Great Northern [fol. 232] systems rather than as an independent line. It is used by the Great Northern and Northern Pacific in the transportation of all business between coast and interior points which can be handled more cheaply over it than over the existing lines of the Great Northern or Northern Pacific."

The holdings in the above-cited Interstate Commerce Commission decisions can be summarized as follows:

1. Control of traffic policy is tantamount to management or control in *rate cases*.

2. Two competitive railroads can jointly manage and control a third railroad by controlling traffic policy insofar as *rate cases* are concerned.

3. Control of traffic policy is also used as the definition of management or control in Section 15(4) cases.

Implicit in these holdings of the Interstate Commerce Commission are two concepts: (a) Control of traffic

policy is decisive in questions of management and control, and (b) two independent railroads can jointly manage and control a third. In addition, these two concepts have been applied on two levels: (1) Rate-making cases, and (2) cases involving Section 15(4). So far the Commission has applied both concepts on the rate case level but has applied only the traffic policy control concept on the Section 15(4) level. This application of the traffic policy control concept to the Section 15(4) level has been tacitly approved by Congress because of its statement in 1940 to the effect that it did not want to interfere with the prevailing interpretation of Section 15(4).

The only remaining question then is whether Congress would also approve of the application of the second concept, i.e. joint management and control by two competitive railroads to the Section 15(4) level. Because of considerations which will be set out in detail below, this court is of the opinion that Congress did intend to cover the present situation when it used the words "under common management or control" in Section 15(4) of the Interstate Commerce Act.

[fol. 233] It will be noticed that the Commission has used the same test in regard to management and control, i.e. control of traffic policy in every situation it has met so far. In other words, the Commission has followed a definite pattern, and it is only reasonable to assume that Congress would expect the Commission to continue to follow this pattern in the future.

The logic of such an assumption is buttressed by the fact that both of the concepts mentioned above have been applied on the rate case level. If at this point one of these concepts is used on the Section 15(4) level and the other rejected, the consistency of the overall plan of railroad regulation would be disturbed. For example, since joint management and control is recognized on the rate case level, the subsidiaries involved in such a situation would not be allowed weak line arbitraries. Arbitraries are differentially higher rates which are allowed to so-called short or weak line railroads in addition to rate scales prescribed for general application. In *Rate Structure Investigation*, Part 13, Salt, 197 I.C.C. 115, 181-182, the Commission stated:

> "It has been the almost uniform practice to give all of these lines, other than those that are under common control or management with some standard carrier, arbitraries in addition to the scales prescribed for general application, and the same course is here warranted."

In addition, the Commission has usually prescribed two distance scales. One is a single line rate scale for application over a single railroad or over two or more lines under the same management and control. The other is a higher joint line scale which applies when the lines embraced in the routes were not under common management and control. In *Livestock To, From, and Between Points in the Southeast*, 101 I.C.C. 105, 107, the Commission stated:

> "* * * we have almost invariably required lines under a common management and control to apply the single-line rates. These decisions were based on the fact that such management and control result in certain benefits in operation, and on our opinion that the single-line rates would be reasonable for application over such lines."

[fol. 234] If the long haul of railroads in a joint management and control situation is not protected by Section 15(4), the very benefits which the Commission regards as preventing them from charging higher joint-line scales or arbitraries, i.e. the economies of joint operation, will be taken from them. Clearly, such a result would be inconsistent.

The obvious purpose of Section 15(4) is to allow a carrier to protect its long haul not only over its own route but over that of a closely associated affiliate. The decision of the Commission in this case is consistent with this purpose, and there has been no sound reason, economic or otherwise, advanced why two joint owners are not any less in need of long haul protection than a single railroad which controls a subsidiary.

Section 15(4) contains a provision which nullifies the long haul protection normally afforded by the statute when the Commission finds that through routes are needed in order to provide adequate and more efficient or more eco-

nomical transportation. Thus, although no real reason has been put forward why joint ownership of a subsidiary plus long haul protection are inherently wrong, the Commission is always in a position by virtue of this exception to see that no one is prejudiced by such an arrangement.

Another point to be considered is the relationship of Section 3(4) of the Act to Section 15(4). The former statute deals with discrimination between railroads, and the plaintiff has conceded that if the S. P. & S. is under the common management or control of the Northern Lines within the meaning of Section 15(4), then the refusal of the S. P. & S. to accord the Milwaukee equal treatment does not constitute a violation of Section 3(4). See *Atlantic Coast Line R. Co.* v. *Cape Fear Rys., Inc.* 218 I.C.C. 152; *Western Pac. R. Co.* v. *Northwestern Pac. R. Co.*, 191 I.C.C. 127; and *Seaboard Air Line Ry. Recs.* v. *Carolina & Northwestern Ry. Co.*, 204 I.C.C. 416.

Viewed in the light of this relationship between the two sections, the decision in *Louisville & Nash. R.R. Co.* v. [fol. 235] *United States*, 242 U.S. 60, strongly supports the views of the Commission in the case at bar. In that decision which involved the use of switching facilities, the court was considering a question of discrimination under the forerunner of Section 3(4). In its opinion the court stated that if either of the joint owners of these switching facilities was the sole owner, discrimination would be impossible because the section as then constituted stated that the Act "shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business." The court then ruled that "* * * what is true of one owner would be equally true of two joint owners, * * *." It should be noticed that this statement was made even though the literal words of the section are singular in meaning.

In the instant case there is also a situation presented where if there were only one owner there could be no possible discrimination. In the case at bar this is so because of the presence of Section 15(4). In the *Louisville* case it resulted from the wording of the forerunner of Section 3(4). In other words, although the reasons for

the impossibility of discrimination in a single owner situation are different, the result is still the same.

Thus, if it could be said that the *Louisville* decision is controlling on the question of discrimination in the present case, which issue this court does not decide, however, it would seem to follow that the S. P. & S. is under the common management and control of the Northern Lines within the meaning of Section 15(4) because of the relationship between that statute and Section 3(4). It is obvious that these sections must be read together for any inconsistency between the two would be untenable.

The plaintiff in this action has cited four Interstate Commerce Commission cases which it claims refutes the possibility of joint management and control by multiple owners. These are: *Absorption of Switching Charges of Alton & S. R.R.*, 157 I.C.C. 129; *Manufacturers Ry. Co.* v. *Ahnapee & W. Ry. Co.*, 172 I.C.C. 554; *Justice Co.* v. *Hol-*[fol. 236] *ton I-U Ry. Co.*, 153 I.C.C. 673; and *Oklahoma Portland Cement Co.* v. *Kansas City S. Ry. Co.*, 188 I.C.C. 464.

The first two cases, due to their very short treatment of the issue of common management and control and because of the very large number of participants, are not persuasive on this issue. The latter decisions, on the other hand, are of little or no value for the fact situations are radically different from that of the case at bar.

Based on the foregoing authority, this court is of the opinion and now holds that the Commission was correct in concluding that the S. P. & S. System is operated in conjunction and under a common management and control with the Northern Lines within the meaning of Section 15(4) of the Interstate Commerce Act.

In respect to the issues numbered 2, 3, and 4 as set out previously in this opinion, the court is of the opinion after a careful review of the record and now holds that the findings of the Commission as to these issues are supported by substantial evidence and, thus, should not be disturbed.

Injunction denied and plaintiff's complaint dismissed.

John S. Hastings, Chief Judge, U. S. Court of Appeals, Robert E. Tehan, Chief Judge, U. S. District Court, Kenneth P. Grubb, U. S. District Judge.

(Original signed by all three Judges.)

[fol. 240] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

Civil Action No. 58-C-77

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, Plaintiff,

EZRA TAFT BENSON, Secretary of Agriculture of the United States; NATIONAL LIVESTOCK PRODUCERS ASSOCIATION; AMERICAN NATIONAL CATTLEMEN'S ASSOCIATION; NATIONAL WOOL GROWERS ASSOCIATION; and CHICAGO PRODUCERS COMMISSION ASSOCIATION, Intervening Plaintiffs,

v.

UNITED STATES OF AMERICA; INTERSTATE COMMERCE COMMISSION; SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY; GREAT NORTHERN RAILWAY COMPANY; and NORTHERN PACIFIC RAILWAY COMPANY, Defendants,

OREGON ELECTRIC RAILWAY COMPANY; OREGON TRUNK RAILWAY; CHICAGO AND NORTH WESTERN RAILWAY COMPANY; CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY; CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY; and THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY, Intervening Defendants.

NOTICE OF APPEAL BY C. M. ST. P. AND P. RR. CO. TO THE SUPREME COURT OF THE UNITED STATES —Filed April 12, 1960

I.

Notice is hereby given that the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, hereinafter called the Milwaukee Road, the plaintiff above named, hereby appeals to the Supreme Court of the United States from the final judgment entered in this action on March 25, 1960, which [fol. 241] dismissed plaintiff's complaint seeking to set

aside and annul a report and order of the Interstate Commerce Commission dated May 10, 1957, in its Docket No. 31466 entitled *Chicago, Milwaukee, St. Paul & Pacific Railroad Company v. Spokane, Portland & Seattle Railway Company et al.* and which denied an injunction against the enforcement of said order.

This appeal is taken pursuant to 28 U.S.C., Section 1253.

II.

The Clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States and include in such transcript the entire record of the proceedings before the specially constituted Three-Judge Court, including the record of proceedings before the Interstate Commerce Commission which was admitted in evidence in this action.

III.

The following questions are presented by this appeal:

1. Whether the District Court erred as a matter of law and as a matter of fact in holding that the Spokane, Portland and Seattle Railway Company is operated in conjunction, and under common management and control, with the Great Northern Railway Company and the Northern Pacific Railway Company within the meaning of Section 15(4) of the Interstate Commerce Act.

2. Whether the District Court erred as a matter of law and as a matter of fact in holding that the finding of the Interstate Commerce Commission that, with certain exceptions, there exist no through routes between points on the Spokane, Portland and Seattle Railway Company, on the one hand, and points throughout the United States via the Milwaukee Road and Spokane, on the other hand, is supported by substantial evidence and should not be disturbed.

[fol. 242] 3. Whether the District Court erred as a matter of law and as a matter of fact in holding that the finding of the Interstate Commerce Commission that it is not necessary or desirable in the public interest, in order to

provide adequate and more efficient or more economical transportation, to require the establishment of through routes and joint rates with reference to certain commodities between the Spokane, Portland and Seattle Railway Company and the Milwaukee Road and its connections via Spokane the same as apply in connection with the Spokane, Portland and Seattle and the Great Northern and Northern Pacific and their connections via Spokane is supported by substantial evidence and should not be disturbed.

4. Whether the District Court erred as a matter of law and as a matter of fact in holding that the finding of the Interstate Commerce Commission that the refusal of the Spokane, Portland and Seattle to participate in joint rates with the Milwaukee Road and its connections similar to those in effect with the Great Northern and the Northern Pacific and their connections was not in violation of Sections 1(4), 3(1) or 3(4) of the Commerce Act is supported by substantial evidence and should not be disturbed.

R. K. Merrill, E. R. Eckersall, E. O. Schiewe, 888 Union Station, Chicago 6, Illinois, B. E. Lutterman, 609 White Building, Seattle, Washington, R. S. Trump, 225 East Mason Street, Milwaukee, Wisconsin, Attorneys for Plaintiff.

[fol. 247] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

Civil Action No. 58-C-77

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, Plaintiff,

EZRA TAFT BENSON, Secretary of Agriculture of the United States; NATIONAL LIVESTOCK PRODUCERS ASSOCIATION; AMERICAN NATIONAL CATTLEMEN'S ASSOCIATION; NATIONAL WOOL GROWERS ASSOCIATION; and CHICAGO PRODUCERS COMMISSION ASSOCIATION, Intervening Plaintiffs,

v.

UNITED STATES OF AMERICA; INTERSTATE COMMERCE COMMISSION; SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY; GREAT NORTHERN RAILWAY COMPANY; and NORTHERN PACIFIC RAILWAY COMPANY, Defendants,

OREGON ELECTRIC RAILWAY COMPANY; OREGON TRUNK RAILWAY; CHICAGO AND NORTH WESTERN RAILWAY COMPANY; CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY; CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY; and THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY, Intervening Defendants.

NOTICE OF APPEAL BY SECRETARY OF AGRICULTURE TO THE SUPREME COURT OF THE UNITED STATES —Filed May 23, 1960

I. Notice is hereby given that Ezra Taft Benson, Secretary of Agriculture of the United States, one of the intervening plaintiffs above named, hereby appeals to the Supreme Court of the United States from the final order denying the injunction and dismissing the complaint, entered in this action on March 25, 1960.

This appeal is taken pursuant to 28 U.S.C. 1958 ed. § 1253.

II. The clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript all of the record, proceedings, and evidence in [fol. 248] this cause, including the docket entries.

III. The Spokane, Portland and Seattle Railway System (S.P. & S. System) maintains joint rates as to all commodities with the Great Northern Railway Company and the Northern Pacific Railway Company (collectively referred to as the Northern Lines), but not with the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Milwaukee Road). The Milwaukee Road competes with the Northern Lines. The Commission concluded that, with limited exceptions, through routes do not presently exist between the S.P. & S. System and the Milwaukee Road, and the Commission rejected the contention, based on §§ 1(4), 3(1), and 3(4) of the Interstate Commerce Act, that the S.P. & S. System was required to establish competitive joint rates with the Milwaukee Road. The Commission refused to compel the S.P. & S. System to establish through routes and competitive joint rates with the Milwaukee Road under § 15(3) and (4) of the Act. The basic facts, as distinguished from the ultimate conclusions of the Commission, are generally undisputed. The District Court affirmed the decision of the Commission. In the circumstances, the questions presented are:

1. Whether the Commission properly applied the appropriate criteria in determining that through routes do not presently exist between the S.P. & S. System and the Milwaukee Road?

2. Whether the Commission properly applied the appropriate criteria in failing to conclude that the S.P. & S. System was required to establish just and reasonable rates applicable to the existing through routes with the Milwaukee Road under § 1(4) of the Act; and whether the Commission properly applied the appropriate criteria in concluding that the S.P. & S. System is not violating the provisions of § 3(1) of the Act relating to undue preferences or prejudices or § 3(4) of the Act relating to discrimination between competing lines?

3. Whether the Commission erred in failing to determine and prescribe just and reasonable rates under § 15(1) of the [fol. 249] Act with respect to shipments made over the Milwaukee Road and the S.P. & S. System, in view of the violations by the S.P. & S. System of §§ 1(4), 3(1), and 3(4) of the Act?

4. Assuming, *arguendo*, that through routes do not presently exist between the S.P. & S. System and the Milwaukee Road, whether the Commission properly applied the appropriate criteria in concluding that it should not require the S.P. & S. System to establish through routes and joint rates with the Milwaukee Road under the provisions of § 15(3) and (4) of the Act?

5. As one of the questions subsidiary to Question 4, *supra*, whether the Commission properly determined the question presented in this case for the first time as to whether, under § 15(4) of the Act, a railroad (S.P. & S. System) can be "operated in conjunction and under a common management or control" with two independent railroads (the Northern Lines), each of which owns 50% of the stock of the former, inasmuch as the Northern Lines are admittedly not operated under common management or control and, admittedly, neither of the Northern Lines can determine independently the transportation policy of the S.P. & S. System?

6. Whether adequate findings and substantial evidence on the record as a whole support the Commission's findings and conclusions with respect to each of the foregoing questions?

Neil Brooks, Assistant General Counsel, Donald A. Campbell, Attorney, Joseph E. Quin, Attorney, United States Department of Agriculture, Washington 25, D. C.

[fol. 260a] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 260b]

SUPREME COURT OF THE UNITED STATES

Nos. 306 & 307, October Term, 1960

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, Appellant,

v.

UNITED STATES, et al.; and EZRA TAFT BENSON, Secretary of Agriculture of the United States, Appellant,

v.

UNITED STATES, et al.

Appeals from the United States District Court for the Eastern District of Wisconsin.

ORDER NOTING PROBABLE JURISDICTION
—October 17, 1960

The statements of jurisdiction in these cases having been submitted and considered by the Court, probable jurisdiction is noted. The cases are consolidated and a total of two hours is allowed for oral argument.

[fol. 261]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 31466

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, Complainant,

v.

SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY, OREGON ELECTRIC RAILWAY COMPANY AND OREGON TRUNK RAILWAY, Defendants.

COMPLAINT—Filed February 16, 1954

The complaint of the above named complainant respectfully shows:

1. That complainant is a corporation duly organized and existing under the laws of the state of Wisconsin and is a common carrier by railroad in the transportation of persons and property in interstate and foreign commerce, and as such is subject to the provisions of the Interstate Commerce Act.

2. Complainant owns and operates approximately 10,600 miles of railroad in the states of Washington, Idaho, Montana, North Dakota, South Dakota, Minnesota, Wisconsin, Michigan, Iowa, Illinois, Indiana, Missouri, and Nebraska.

[fol. 262] Among its eastern terminals are Chicago, Illinois; Milwaukee, Wisconsin; Omaha, Nebraska; Kansas City, Missouri; and Minneapolis, St. Paul and Minnesota Transfer, Minnesota, at which points a large volume of freight traffic (which term as hereinafter used includes both carload and less-than-carload traffic) is interchanged with other railroads subject to the provisions of the Interstate Commerce Act, serving, either directly or through their connections, all parts of the United States, Mexico and the Dominion of Canada.

Among complainant's western terminals are Seattle and Tacoma, Washington, where a large volume of freight traffic is interchanged with other railroads and water carriers engaged in both interstate and foreign commerce; and Spokane, Washington, where complainant interchanges freight traffic with the defendant, Spokane, Portland and Seattle Railway Company, but only to the extent hereinafter set forth. Complainant also originates and terminates a great volume of freight traffic at points upon its line, which traffic is destined to or originates in all parts of the United States and in Canada and Mexico.

3. That the defendant, Spokane, Portland and Seattle Railway Company (hereinafter called "SP&S") is a corporation duly organized and existing under the laws of the state of Washington, and owns all of the capital stock of the defendant, Oregon Electric Railway Company (hereinafter called "Oregon Electric"), a corporation duly organized and existing under the laws of the state of Oregon, and all of the capital stock, except qualifying [fol. 263] shares, of Oregon Trunk Railway (hereinafter called "Oregon Trunk"), a corporation duly organized and existing under the laws of the state of Washington.

Said defendants are common carriers by railroad engaged in the transportation of persons and property in interstate and foreign commerce, the lines of said defendants being known as the Spokane, Portland and Seattle Railway System. The lines of said defendants lie entirely within the states of Oregon and Washington, the eastern terminus of said system being Spokane, Washington, located on the line of the SP&S. The lines of the Oregon Electric connect with the SP&S at Portland, Linnton and Willbridge, Oregon. The line of the Oregon Trunk connects with the SP&S at Wishram, Washington. The territory served by defendants lies southwest of Spokane, Washington, and is not served directly by complainant.

4. Complete physical track connections and interchange facilities for the interchange of freight traffic between complainant and the SP&S have long been installed and in actual use at Spokane, Washington, and through routes and

joint through rates and agreed divisions of said rates have long been in effect between complainant and defendants via said interchange point, and freight traffic moving thereunder has long been interchanged between complainant and the SP&S at said interchange point, but only to the limited extent hereinafter in this paragraph described. The freight traffic which has been, is or may be so interchanged with the SP&S at Spokane, Washington under such joint rates and agreed divisions is as follows:

[fol. 264] (a) Lumber, shingles and other forest products from stations on the lines of defendants, except stations on the Oregon Electric Santiam and Foster, Oregon, branch lines, Index Nos. 600 to 660, inclusive, of Agent A. P. Leland's I.C.C. No. A-33, to stations on the lines of complainant in South Dakota east of Mobridge, North Dakota, Minnesota, Iowa, Wisconsin, Illinois, Michigan and Missouri, as named in TCFB Tariff Nos. 18-P and 28-O, Agent W. J. Prueter's I.C.C. Nos. 1474 and 1545, respectively, also to Mobridge, South Dakota, as named in NPCFB Tariff No. 58-D, Agent W. R. Watson's I.C.C. No. 864. These destination stations, however, do not include Chicago, Illinois, Duluth, Minnesota, LaCrosse, Prairie du Chien and Superior, Wisconsin, stations on the complainant's Terre Haute Division, nor stations on several other branch lines in Minnesota, Iowa, Wisconsin and Illinois. The points on complainant's said railroad to which such joint through rates apply may be determined in detail by examination of the above named tariffs.

(b) Lumber and other forest products from Vernonia, Oregon on the SP&S to stations on complainant's lines in Montana, North and South Dakota, Mobridge and west, and on White Sulphur Springs & Yellowstone Park Railway Co., all as named in NPCFB Tariff No. 58-D, Agent W. R. Watson's I.C.C. No. 864.

(c) Class rates between Portland and East Portland, Oregon, and Vancouver, Washington, on the one

[fol. 265] hand, and stations on complainant's Metaline Falls Branch Line, Index Nos. 12650 to 12698, inclusive, of Agent A. P. Leland's I.C.C. No. A-33, as named in NPCFB Tariff No. 65-G, Agent W. R. Watson's I.C.C. No. 857.

(d) Petroleum and petroleum products from East Pasco, Washington to stations on complainant's lines in Washington and Idaho as named in NPCFB Tariff No. 14-Q, Agent W. R. Watson's I.C.C. No. 859.

(e) Petroleum and petroleum products from Great Falls, Montana to SP&S stations Hooper to Goldendale, Washington, inclusive, and specific commodity rate on petroleum crude oil from Baker, Montana to Willbridge, Oregon, all as named in CMStP&P RR tariff GFD No. 17855-C, I.C.C. No. B-7728.

(f) Livestock between stations on complainant's lines in Washington (east of Warden), Idaho and Montana, on the one hand, and stations on defendant's lines, on the other, as named in NPCFB Tariff No. 69-B, Agent W. R. Watson's I.C.C. No. 829.

(g) Plaster and related articles from Hanover and Heath, Montana, to Oregon Electric stations, Hillsboro to Eugene, Oregon, inclusive, as named in CMStP&P RR GFD No. 12850-I I.C.C. No. B-7194.

(h) Portland cement from Metaline Falls, Washington to stations on the Oregon Trunk, and to stations on the SP&S west of Spokane, Washington, to and in-
[fol. 266] cluding Portland, Oregon, all as named in NPCFB Tariff No. 21-I, Agent W. R. Watson's I.C.C. No. 825.

(i) On export and import traffic arriving at or departing from the Portland, Oregon terminals and Astoria, Oregon and destined to or originating on the lines of complainant and its connections in the state of Montana and east thereof as named in TCFB Tariffs Nos. 29-J and 30-H, Agent W. J. Prueter's I.C.C. Nos. 1553 and 1554, respectively.

(j) Miscellaneous commodities between Portland and East Portland, Ore., on the one hand, and stations on complainant's Metaline Falls Line, Index Nos. 12651 to 12698, inclusive, of Agent A. P. Leland's I.C.C. No. A-33, as named in NPCFB Tariff No. 2-L, Agent W. R. Watson's I.C.C. No. 862.

5. That through routes and joint through rates now exist and have for many years existed for the interchange of traffic at Spokane, Washington between defendants and certain other railroads subject to the provisions of the Interstate Commerce Act, to-wit, Great Northern Railway Company (hereinafter called "Great Northern"), Northern Pacific Railway Company (hereinafter called "Northern Pacific"), and their connections, covering, both eastbound and westbound, and without limitation or restriction as to length of haul over the lines of said Great Northern and Northern Pacific, all freight traffic of whatsoever nature moving between points on defendants' lines, on the one hand, and all other parts of the United States generally east of Spokane, and Canada and Mexico, on the other. Appendix [fol. 267] A hereto attached and made a part hereof sets forth the tariffs and territorial application of the joint through rates in this paragraph described, together with the commodities to which such rates are applicable. The tariffs thus shown are representative and not necessarily all-inclusive.

6. That complainant has requested defendants to enter into arrangements for the establishment of joint through rates and divisions on all traffic as above described in paragraph 5 hereof via Spokane, Washington as an interchange point to the same extent as granted by defendants to said Great Northern and Northern Pacific, but defendants have refused and still refuse so to do.

7. That by reason of the limited application of such joint through rates as now exist between complainant and defendants and by reason of the refusal of defendants to enter into joint through rates similar to those presently enjoyed by said Great Northern and Northern Pacific, as

above described, complainant is restricted in its participation in freight traffic either originating at or destined to points on defendants' lines of railroad (except to the limited extent described in paragraph 4 hereof) to the handling of said traffic between junctions of complainant with said Great Northern and Northern Pacific and their connections at points on or east of the Missouri River, and also at points in the state of Montana, (such junction points being hereinafter referred to as "Eastern gateways"), and points east and south thereof, thereby depriving complainant of the haul over its lines between Spokane and said Eastern gateways, a distance of 1,460 miles in the case of Minnesota [fol. 268] Transfer, Minnesota, which is a representative Eastern gateway. That the only rates now available to complainant and its connections via said Spokane interchange on traffic between points on defendants' lines and points on the lines of complainant and its connections (other than those described in paragraph 4 hereof) are combination rates comprised of local factors between Spokane and points on the lines of defendants and between Spokane and points on the lines of complainant and its connections respectively, which combination rates are invariably substantially higher than the joint through rates now enjoyed by said Great Northern and Northern Pacific in connection with defendants, and which said combination rates are unjust and unreasonable in violation of Section 1 of the Interstate Commerce Act, and will not attract freight traffic on a competitive basis with said through rates. In order to participate in westbound traffic which originates on the lines of complainant and its connections and destined to points on defendants' lines, complainant is obliged to yield such traffic to the Great Northern or Northern Pacific or their connections at said Eastern gateways, thereby depriving complainant of a substantial portion of the line-haul to which it is normally entitled. That, except as hereinabove otherwise noted, on traffic originating on the lines of defendants and destined to points generally east of Spokane, Washington, by reason of the restriction of joint through rates via Spokane to said Great Northern and Northern Pacific, complainant can not share in such traffic

from Spokane, Washington, but is restricted to a haul from the Eastern gateway to destination or point of inter-
[fol. 269] change with its connections, thereby depriving complainant of that portion of the haul from Spokane to the Eastern gateway.

That by reason of said refusal of said defendants to establish such joint through rates via Spokane, complainant is unable to compete with said Great Northern and Northern Pacific for traffic between points on defendants' lines and points on complainant's lines in the State of Montana or west of the Missouri River which are common points with said Great Northern and Northern Pacific, or either of them.

That by reason of such refusal complainant is further at a disadvantage, even in cases where joint rates are in effect as described in paragraph 4 hereof, with respect to traffic between points on defendants' lines and points on complainant's lines, for the reason that because of the restrictive and limited application of the few joint through rates which are in effect via Spokane it is impossible for shippers or consignees to avail themselves of diversion and transit privileges which otherwise would be available to them.

That by reason of such refusal complainant is further placed at a disadvantage with respect to traffic originating at or destined to local non-competitive points upon its lines west of the Missouri River because shippers, in order to obtain the lowest combination of local rates, are obliged to route traffic via the nearest junction of said Great Northern or Northern Pacific, thereby depriving complainant of a substantial line-haul.

[fol. 270] 8. That, the extreme easterly terminus of defendants being Spokane on the SP&S, the establishment of a full line of joint through rates via Spokane would not deprive the defendants or any of them of any portion of their line-haul.

9. That complainant's line between Spokane, Washington and said Eastern gateways is direct and without circuity, the distance via complainant's line, for example, between

Spokane and Minnesota Transfer being 1,460 miles, via the Great Northern 1,429 miles, and via the Northern Pacific 1,486 miles, and that the opening of an additional through route for all traffic via complainant's line would provide adequate and more efficient and more economic transportation.

10. That the Commission should prescribe just, reasonable, non-discriminatory and competitive through routes and joint through rates applicable to the transportation of freight traffic via Spokane, Washington over the lines of defendants and of complainant and its connections, together with all terminal services and privileges, transit privileges including diversion and reconsignment, allowances and all other rights and privileges available to shippers and receivers of freight, where such routes and rates do not already exist via complainant's line, to the same extent as now are and hereafter may be in effect via Spokane over the lines of defendants and said Great Northern and Northern Pacific and their connections.

When and if such routes and rates are established and prescribed by the Commission, the proceeding should be held open so that the complainant and defendants will be [fol. 271] given an opportunity voluntarily to establish just, reasonable, equitable, non-preferential and non-prejudicial divisions, failing in which the proceeding should be assigned for further hearing so that the Commission may determine and prescribe just, reasonable, equitable, non-preferential and non-prejudicial divisions as between complainant and the defendants.

11. Complainant does not seek in this proceeding exclusive joint through rates or through routes restricted to its line between said Eastern gateways and points east thereof on any traffic originating or terminating on lines of defendants and interchanged between complainant and said defendants at Spokane, Washington, but, on the contrary, it is complainant's purpose and desire that the routing of such traffic east of said Eastern gateways remain free and open to all carriers serving said gateways to the same extent as now enjoyed by such carriers.

12. That by reason of the facts stated in the foregoing paragraphs, the failure and refusal of the defendants to establish competitive through routes and joint through rates and charges applicable to the freight traffic and between the points hereinabove described constitutes violations by defendants of Section 1(4) and Sections 3(1) and 3(4) of the Interstate Commerce Act, and deprives the public and complainant of the use of available and reasonable through routes and reasonable non-discriminatory through rates which are necessary and desirable in the public interest.

Wherefore, complainant prays that defendants be severally required to answer the charges herein; that after [fol. 272] due hearing and investigation an order be made commanding said defendants and each of them to cease and desist from the aforesaid violations of the Interstate Commerce Act, and to require said defendants to establish, put in force, maintain and apply in the future to the transportation of the freight traffic hereinbefore described, between points on defendants' lines and points on the lines of complainant and its connections, in lieu of the existing unjust, unreasonable and discriminatory routes and combination rates and charges via Spokane, Washington, just, reasonable, non-discriminatory and competitive through routes and joint through rates and charges via Spokane, where such routes and rates do not already exist via complainant's line, with respect to the traffic and between the places and territories hereinbefore described, together with all terminal services and privileges, transit privileges including diversion and reconsignment, allowances and all other rights and privileges now or hereafter available to shippers and receivers of freight via the other routes described in paragraph 5 hereof; that the Commission, by order, determine and prescribe just, reasonable, equitable, non-preferential and non-prejudicial divisions of the said joint rates and charges herein sought, in the event the defendants fail and refuse voluntarily to establish such divisions; and that [fol. 273] such further order or orders be made as the

Commission may consider proper and necessary in the premises.

Dated at Chicago, Illinois, the 16th day of February, 1954.

Respectfully submitted,

B. E. Lutterman, 699 White Building, Seattle 1, Washington, Thos. H. Maguire, R. K. Merrill, 888 Union Station, Chicago 6, Illinois, Attorneys for Complainant.

(Counsel's note. App. A to this complaint is in effect identical to App. B to Exhibit A of complaint of C. M. St.P. & P. RR. Co. in the District Court. In the circumstances it is deemed unnecessary to print it here.)

[fol. 274]

BEFORE THE INTERSTATE COMMERCE COMMISSION

[Title omitted]

JOINT AND SEPARATE ANSWER OF DEFENDANTS SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY, OREGON ELECTRIC RAILWAY COMPANY, AND OREGON TRUNK RAILWAY—Filed March 29, 1954

The defendants above named, for answer to the complaint in this proceeding, respectfully state:

1. Admit the allegations of paragraph 1 of said complaint.

2. Admit the allegations of paragraph 2 of said complaint except the allegations therein contained concerning the alleged interchange of freight traffic between the complainant and the defendant Spokane, Portland and Seattle Railway Company, and allege that the facts with respect to such interchange are as stated hereinafter.

3. Answering paragraph 3 of said complaint, defendants admit all allegations thereof except the allegation [fol. 275] that the eastern terminus of defendants' system is Spokane, Washington, located on the line of the SP&S,

and allege that the facts with respect thereto are as stated hereinafter.

4. Answering paragraph 4 of the complaint, defendants deny that defendant Spokane, Portland and Seattle Railway Company, as an independent line, has any physical track connection or interchange facilities at Spokane, Washington, with complainant, and allege that the facts with respect to the subject matter of paragraph 4 of said complaint are as follows: Defendants, as separate corporate entities, own certain lines of railroad in the states of Oregon and Washington. The line of defendant SP&S so owned extends easterly in the State of Washington to Marshall Junction, Washington, where it connects with the line of Northern Pacific Railway Company, and to Fort Wright, Washington, where it connects with the line of Great Northern Railway Company. Under existing contract with Great Northern Railway Company and Northern Pacific Railway Company, which contract is cancelable upon six months' written notice, defendant SP&S is permitted to operate its trains over the tracks of said companies from the respective points of connection hereinbefore referred to, to-wit: Fort Wright and Marshall Junction, to the passenger terminals of Great Northern Railway Company and Northern Pacific Railway Company at Spokane, Washington, also to the freight terminal of Great Northern Railway Company at Hillyard, Washington, and also to the freight terminal of Northern Pacific [fol. 276] Railway Company at Yardley, Washington. Under said contract Great Northern Railway Company and Northern Pacific Railway Company furnish said defendant with certain terminal services at the aforesaid points, including the handling of interchange traffic with complainant.

For a correct statement of the rates referred to or complained of in the complaint, defendants refer the Commission to the tariffs duly filed with said Commission publishing said rates.

5. Answering paragraph 5 of said complaint, defendants admit that through routes and joint rates exist and have existed for many years for the interchange of traffic

between defendants and Great Northern Railway Company and between defendants and Northern Pacific Railway Company, said through routes and joint through rates covering freight traffic generally moving both eastbound and westbound between points on defendants' lines, on the one hand, and generally other parts of the United States, Canada, and Mexico, on the other, and allege that defendants and Great Northern Railway Company are connecting railroads operated in conjunction and under a common management or control, lying between the termini of such through routes, and that defendants and Northern Pacific Railway Company are connecting railroads operated in conjunction and under a common management or [fol. 277] control, lying between the termini of such through routes; and deny the allegations of paragraph 5 of said complaint save as hereinbefore admitted or stated otherwise.

6. Admit that the complainant has requested that defendants enter into arrangements for the establishment of joint through rates and divisions on certain traffic and defendants alleged that said request has been declined at the direction of Great Northern Railway Company and Northern Pacific Railway Company, who control the traffic policies of defendants.

7. Answering paragraphs 7 through 12, inclusive, of said complaint, defendants specifically deny the following allegations:

(a) That the establishment of a full line of joint through rates via Spokane would not deprive the defendants or any of them of any portion of their line haul.

(b) That the opening of an additional through route for all traffic via complainant's line would provide adequate and more efficient and more economic transportation.

(c) That the public and complainant are deprived of the use of available and reasonable through routes and reasonable, nondiscriminatory through rates which are necessary and desirable in the public interest.

Defendants further deny that the Commission should prescribe any through routes or joint through rates as

[fol. 278] alleged; deny all material allegations in said paragraphs save as admitted, qualified or otherwise herein stated; deny that defendants, or any of them, have violated or are violating any of the statutes or laws of the United States or that anything done or omitted by them, or any of them, with respect to the subject matter of said complaint is in violation of law; deny that any of the rates referred to in said paragraphs are unreasonable, prejudicial, discriminatory or unlawful; deny that defendants, or any of them, should be subjected to any adverse order; deny that the complainant is entitled to the relief prayed for or any other relief; and deny that the said complainant is entitled to any haul on any of the traffic described in said paragraphs.

8. Each and every allegation of the complaint not hereinbefore admitted, qualified or otherwise stated, is hereby specifically denied.

9. Further answering, defendants allege that if complainant should be granted the relief prayed for in the complaint or any part thereof, defendants would be required, without their consent, to embrace within such through routes substantially less than the entire length of their railroads and of the intermediate railroad of either Great Northern Railway Company or Northern Pacific Railway Company which lies between the termini of the proposed through routes, said Great Northern Railway Company and said Northern Pacific Railway Company [fol. 279] each being operated in conjunction and under common management or control with defendants, and that such relief would be contrary to and in violation of the provisions of Section 15 (4) of the Interstate Commerce Act.

Wherefore, said defendants pray that the complaint in this proceeding be dismissed.

Charles A. Hart, Fletcher Rockwood, Attorneys for Defendants, 1410 Yeon Building, Portland 4, Oregon.

[fol. 280]

BEFORE THE INTERSTATE COMMERCE COMMISSION

[Title omitted]

PETITION BY GREAT NORTHERN RAILWAY COMPANY FOR LEAVE TO INTERVENE—Filed April 5, 1954

Comes now your petitioner, Great Northern Railway Company, and respectfully represents that it has an interest in the matters in controversy in the above-entitled proceeding and desires to intervene in and become a party to said proceeding, and for grounds of the proposed intervention says:

I.

Petitioner is a corporation organized under the laws of the State of Minnesota and a common carrier by railroad engaged in the transportation of persons and property in [fol. 281] interstate and foreign commerce subject to the provisions of the Interstate Commerce Act. Petitioner's lines of railroad extend into and across the following states, to-wit, Wisconsin, Minnesota, Iowa, North Dakota, South Dakota, Montana, Idaho, Washington, Oregon and California and into the Dominion of Canada.

II.

Petitioner's railroad connects with the line of defendant Spokane, Portland and Seattle Railway Company at Fort Wright, Washington, and connects with the line of said defendant and with the lines of the Oregon Electric Railway Company and Oregon Trunk Railway at certain points west of Fort Wright, Washington. Through routes and joint rates exist and have existed for many years for the interchange of traffic between the defendants above named and petitioner, said through routes and joint rates covering freight traffic generally moving both eastbound and westbound between points on defendants' lines on the one hand and generally other parts of the United States, Canada and Mexico on the other. Defendants and Great Northern Railway Company are connecting railroads operated in con-

junction and under a common management or control lying between the termini of such existing through routes.

[fol. 282] The establishment of the through routes and joint rates demanded in the complaint is neither necessary nor desirable in the public interest. If complainant should be granted the relief prayed for in the complaint, or any part thereof, defendants and petitioner would be required, without their consent, to embrace within the through routes which complainant seeks to establish substantially less than the entire length of defendants' railroads and of the intermediate railroad of petitioner lying between the termini of such proposed through routes. The granting of such relief would be contrary to and in violation of the provisions of Section 15(4) of the Interstate Commerce Act and would operate to deprive defendants and petitioner of traffic and revenues which they now enjoy and which are protected under the provisions of Section 15(4) of the Interstate Commerce Act.

Wherefore, said Great Northern Railway Company prays leave to intervene and be treated as a party hereto with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses, and be heard by counsel upon brief and at the oral argument, if oral argument is granted.

Dated at St. Paul, Minnesota, this 2nd day of April, 1954.

Edwin C. Matthias, Anthony Kane, Charles A. Hart, Fletcher Rockwood, R. Paul Tjossem, L. E. Torinus, Attorneys for Petitioner, 1120 Great Northern Building, St. Paul 1, Minnesota.

[fol. 283]

BEFORE THE INTERSTATE COMMERCE COMMISSION

[Title omitted]

REPLY OF COMPLAINANT TO JOINT AND SEPARATE ANSWER OF DEFENDANTS—Filed April 7, 1954

The above-named complainant replies to the affirmative allegations set forth in the joint and separate answer of the above-named defendants as follows:

1. Complainant denies knowledge or information sufficient to form a belief as to the affirmative matter set forth in lines 8 to 28 inclusive in Paragraph 4 of the answer, wherein it is alleged in substance that the line of defendant, Spokane, Portland and Seattle Railway Company, extends easterly in the State of Washington to Marshall Junction, where it connects with the line of Northern Pacific Railway Company, and to Fort Wright, Washington, where it connects with the line of Great Northern Railway Company, and wherein the terms of an alleged existing contract with said Northern Pacific Railway Company and Great Northern Railway Company are set forth and described, wherefore complainant specifically denies said affirmative allegations.

[fol. 284] 2. Replying to Paragraph 5 of said answer, complainant specifically denies that defendants, or any of them, and Northern Pacific Railway Company or Great Northern Railway Company, or either of them, are connecting railroads operated in conjunction or under a common management or control in any respect whatsoever.

3. Replying to Paragraph 6, complainant specifically denies that the request of complainant for the establishment of joint through rates and divisions has been declined by defendants at the direction of Northern Pacific Railway Company and Great Northern Railway Company, or either of them, or that either of said last-named railway companies control the traffic policies of defendants or any of them.

4. Replying to Paragraph 9, complainant specifically denies that said Great Northern Railway Company, said Northern Pacific Railway Company, or either of them, are operated in conjunction or under common management or control with defendants, or any of them, or that the relief sought in the complaint would be contrary to or in violation of the provisions of Section 15(4) of the Interstate Commerce Act.

Wherefore, complainant prays for the relief set forth in its complaint herein.

[fol. 285] Dated at Chicago, Illinois, this 6th day of April, 1954.

Respectfully submitted,

B. E. Lutterman, 609 White Building, Seattle 1, Washington; Thos. H. Maguire, R. K. Merrill, 888 Union Station, Chicago 6, Illinois, Attorneys for Complainant.

CERTIFICATE OF SERVICE (omitted in printing).

[fol. 286]

BEFORE THE INTERSTATE COMMERCE COMMISSION

[Title omitted]

ORDER GRANTING GREAT NORTHERN RAILWAY CO. et al. LEAVE TO INTERVENE—April 17, 1954

In the Matter of Petitions for Leave to Intervene.

Present: Charles D. Mahaffie, Commissioner, to whom the above-entitled matter has been assigned for action thereon.

Upon consideration of the record in the above-entitled proceeding and petitions filed on behalf of the Great Northern Railway Company and the Northern Pacific Railway Company.

It is ordered, That the Great Northern Railway Company and the Northern Pacific Railway Company be, and they are hereby, permitted to intervene and be treated as parties to this proceeding, with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses and be heard on brief and on oral argument, if oral argument is heard; provided, however, that the permission to intervene herein granted shall not be construed to allow interveners to introduce evidence which will unduly broaden the issues raised in the Complaint.

It is further ordered, That a copy of said petitions for leave to intervene, and a copy of this order, be served upon each of the parties to this proceeding.

Dated at Washington, D. C., this 7th day of April, A. D. 1954.

By the Commission, Commissioner Mahaffie.

George W. Laird, Secretary

[SEAL]

[fol. 287]

BEFORE THE INTERSTATE COMMERCE COMMISSION

[Title omitted]

PETITION OF THE SECRETARY OF AGRICULTURE OF THE UNITED STATES FOR LEAVE TO INTERVENE —Filed June 17, 1954

Comes now the Secretary of Agriculture of the United States and respectfully represents that he has an interest in the issues involved in the above-captioned proceeding; that he desires to intervene therein and be made a party thereto; that the intervention will not unduly broaden the issues involved; and, as grounds for the proposed intervention, states:

I

The interest of the Secretary of Agriculture flows from section 201 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1291) and section 203(j) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1622). Section 201 of the former act authorizes the Secretary to intervene in proceedings [fol. 288] before the Commission in which rates, charges, tariffs, and practices relating to the transportation of farm products and the public interest are involved. Section 203(j) of the latter act directs the Secretary "to assist in improving transportation services and facilities and in obtaining equitable and reasonable transportation rates and services and adequate transportation facilities for agricultural products and farm supplies by making complaint or petition to the Interstate Commerce Commission, . . . with respect to rates, charges, tariffs, practices, and services, or by working directly with individual carriers or groups of carriers." Section 207 of this act defines

"agricultural products" as including "agricultural, horticultural, viticultural, and dairy products, livestock and poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed and manufactured products thereof."

II

This proceeding brings into issue the proposed establishment of competitive joint through rates applicable on freight traffic, moving via the Spokane, Washington, gateway, between points in Montana; North Dakota, South Dakota, Minnesota, Wisconsin, Iowa, Nebraska, Missouri, and Illinois served by the complainant and points in Oregon and Washington served by the defendants.

[fol. 289]

III

Large quantities of agricultural products are produced in and distributed from, to, and within the traffic territories involved in this proceeding. The origin states affected are surplus producing areas for many agricultural products and Spokane is an important gateway for their distribution. Any adjustment in the rates, charges, and tariffs of the transportation agencies which will facilitate the distribution or reduce the cost of such products is in the public interest and of concern to the agricultural community.

IV

Wherefore, the Secretary of Agriculture requests that he be permitted to intervene in this proceeding pursuant to the provisions of the statutes cited above in order to foster and protect such interests of his as may be involved in the proceeding, and that he thereafter be treated as a party thereto, all according to the Commission's General Rules of Practice.

[fol. 290] Respectfully submitted, by direction of the Secretary of Agriculture of the United States.

Chas. B. Bowling, Chief, James L. Pease, Assistant Chief, Freight Rate Service Branch, Agricultural Marketing Service, Charles W. Bucy, Associate Solicitor, Henry A. Cockrum, Attorney, United States Department of Agriculture, Washington, D. C.

[fol. 291]

BEFORE THE INTERSTATE COMMERCE COMMISSION

[Title omitted]

ORDER GRANTING SECRETARY OF AGRICULTURE LEAVE TO INTERVENE—June 17, 1954

In the Matter of Petition for Leave to Intervene.

Present: J. Monroe Johnson, Chairman, to whom the above entitled matter has been assigned for action thereon.

Upon consideration of the record in the above-entitled proceeding and petition filed on behalf of the Secretary of Agriculture of the United States.

It is ordered, That the Secretary of Agriculture of the United States be, and he is hereby, permitted to intervene and be treated as a party to this proceeding, with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses and be heard on brief and on oral argument, if oral argument is heard; provided, however, that the permission to intervene herein granted shall not be construed to allow intervener to introduce evidence which will unduly broaden the issues raised in the complaint.

It is further ordered, That a copy of said petition for leave to intervene, and a copy of this order, be served upon each of the parties to this proceeding.

Dated at Washington, D. C., this 17th day of June, A. D. 1954.

By the Commission, Chairman Johnson.

George W. Laird, Secretary.

[SEAL]

[fol. 292]

BEFORE THE INTERSTATE COMMERCE COMMISSION

[Title omitted]

AMENDED COMPLAINT—August 27, 1954

The amended complaint of the above named complainant respectfully shows:

1. That complainant is a corporation duly organized and existing under the laws of the state of Wisconsin and is a common carrier by railroad in the transportation of persons and property in interstate and foreign commerce, and as such is subject to the provisions of the Interstate Commerce Act.

2. Complainant owns and operates approximately 10,600 miles of railroad in the states of Washington, Idaho, Montana, North Dakota, South Dakota, Minnesota, Wisconsin, Michigan, Iowa, Illinois, Indiana, Missouri and Nebraska. [fol. 293] Among its eastern terminals are Chicago, Illinois; Milwaukee, Wisconsin; Omaha, Nebraska; Kansas City, Missouri; and Minneapolis, St. Paul and Minnesota Transfer, Minnesota, at which points a large volume of freight traffic (which term as hereinafter used includes both carload and less-than-carload traffic) is interchanged with other railroads subject to the provisions of the Interstate Commerce Act, serving, either directly or through their connections, all parts of the United States, Mexico and the Dominion of Canada.

Among complainant's western terminals are Seattle and Tacoma, Washington, where a large volume of freight traffic is interchanged with other railroads and water carriers engaged in both interstate and foreign commerce; and Spokane, Washington, where complainant interchanges freight traffic with the defendant, Spokane, Portland and Seattle Railway Company, but only to the extent hereinafter set forth. Complainant also originates and terminates a great volume of freight traffic at points upon its line, which traffic is destined to or originates in all parts of the United States and in Canada and Mexico.

3. That the defendant, Spokane, Portland and Seattle Railway Company (hereinafter called "SP&S") is a corporation duly organized and existing under the laws of the state of Washington, and owns all of the capital stock of the defendant, Oregon Electric Railway Company (hereinafter called "Oregon Electric"), a corporation duly organized and existing under the laws of the state of Oregon, and all of the capital stock, except qualifying shares, of [fol. 294] Oregon Trunk Railway (hereinafter called "Oregon Trunk"), a corporation duly organized and existing under the laws of the state of Washington.

Said defendants are common carriers by railroad engaged in the transportation of persons and property in interstate and foreign commerce, the lines of said defendants being known as the Spokane, Portland and Seattle Railway System. The lines of said defendants lie entirely within the states of Oregon and Washington, the eastern terminus of said system being Spokane, Washington, located on the line of the SP&S. The lines of the Oregon Electric connect with the SP&S at Portland, Linnton and Willbridge, Oregon. The line of the Oregon Trunk connects with the SP&S at Wishram, Washington. The territory served by defendants lies southwest of Spokane, Washington, and is not served directly by complainant. The defendants, SP&S, Oregon Electric and Oregon Trunk, will hereinafter occasionally be referred to as "the SP&S System".

4. The other defendants named in Appendix A hereto attached and made a part hereof are common carriers engaged in the transportation of property and persons in interstate and foreign commerce, wholly by railroad, or partly by railroad and partly by water, between places in the United States, and between places in the United States on the one hand and places in the Dominion of Canada and the Republic of Mexico on the other, and as such common carriers are subject to the provisions of the Interstate Commerce Act.

[fol. 295] Said other defendants named in said Appendix A are connecting lines which make up various through routes in which complainant participates between various points in the United States, including the District of Columbia, and between such points and points in the Domin-

ion of Canada and the Republic of Mexico. Said other defendants will hereinafter occasionally be referred to as "connections".

5. Complete physical track connections and interchange facilities for the interchange of freight traffic between complainant and the SP&S have long been installed and in actual use at Spokane, Washington, and through routes and joint through rates and agreed divisions of said rates have long been in effect between complainant and defendants via said interchange point, and freight traffic moving thereunder has long been interchanged between complainant and the SP&S at said interchange point, but only to the limited extent hereinafter in this paragraph described. The freight traffic which has been, is or may be so interchanged with the SP&S at Spokane, Washington under such joint rates and agreed divisions is as follows:

(a) Lumber, shingles and other forest products from stations on the SP&S System, except stations on the Oregon Electric Santiam and Foster, Oregon, branch lines, Index Nos. 600 to 660, inclusive, of Agent A. P. Leland's I.C.C. No. A-34 (formerly A-33), to stations on the lines of complainant in North and South Dakota east of Mobridge, Minnesota, Iowa, Wisconsin, Illinois, Michigan and [fol. 296] Missouri, as named in TCFB Tariff Nos. 18-P and 28-O, Agent W. J. Prueter's I.C.C. Nos. 1474 and 1545, respectively, also to Mobridge, South Dakota, as named in NPCFB Tariff No. 58-D, Agent W. R. Watson's I.C.C. No. 864. These destination stations, however, do not include Chicago, Illinois, Duluth, Minnesota, LaCrosse, Prairie du Chien and Superior, Wisconsin, certain stations in North Dakota, stations on the complainant's Terre Haute Division, nor stations on several other branch lines in Minnesota, Iowa, Wisconsin and Illinois. The points on complainant's said railroad to which such joint through rates apply may be determined in detail by examination of the above named tariffs.

(b) Lumber and other forest products from Vernonia, Oregon on the SP&S to stations on com-

plainant's lines in Montana, North and South Dakota, Mobridge and west, and on White Sulphur Springs & Yellowstone Park Railway Co., all as named in NPCFB Tariff No. 58-D, Agent W. R. Watson's I.C.C. No. 864.

(c) Class rates between Portland and East Portland, Oregon, and Vancouver, Washington, on the one hand, and stations on complainant's Metaline Falls Branch Line, Index Nos. 12650 to 12698, inclusive, of Agent A. P. Leland's I.C.C. No. A-34 (formerly A-33), as named in NPCFB Tariff No. 65-G, Agent W. R. Watsons I.C.C. No. 857.

[fol. 297] (d) Petroleum and petroleum products from East Pasco, Washington to stations on complainant's lines in Washington and Idaho, as named in NPCFB Tariff No. 14-Q, Agent W. R. Watson's I.C.C. No. 859.

(e) Petroleum and petroleum products from Great Falls, Montana to SP&S stations Hooper to Goldendale, Washington, inclusive, and specific commodity rate on petroleum crude oil from Baker, Montana to Willbridge, Oregon, all as named in CMStP&P RR Tariff GFD No. 17855-C, I.C.C. No. B-7728.

(f) Livestock between stations on complainant's lines in Washington (east of Warden), Idaho and Montana, on the one hand, and stations on defendants' lines, on the other, as named in NPCFB Tariff No. 69-B, Agent W. R. Watson's I.C.C. No. 829.

(g) Plaster and related articles from Hanover and Heath, Montana, to Oregon Electric stations, Hillsboro to Eugene, Oregon, inclusive, as named in CMStP&P RR GFD No. 12850-I I.C.C. No. B-7194.

(h) Portland cement from Metaline Falls, Washington to stations on the Oregon Trunk, and to stations on the SP&S west of Spokane, Washington, to and including Portland, Oregon, all as named in NPCFB Tariff No. 21-I, Agent W. R. Watson's I.C.C. No. 825.

[fol. 298] (i) On export and import traffic arriving at or departing from the Portland, Oregon terminals, Astoria, Oregon, and Vancouver, Washington, and destined to or originating on the lines of complainant and its connections in the state of Montana and east thereof as named in TCFB Tariffs Nos. 29-J and 30-H, Agent W. J. Prueter's I.C.C. Nos. 1553 and 1554, respectively.

(j) Miscellaneous commodities between Portland and East Portland, Oregon, on the one hand, and stations on complainant's Metaline Falls Line, Index Nos. 12651 to 12698, inclusive, of Agent A. P. Leland's I.C.C. No. A-34 (formerly A-33); pipe, sewer, and related articles from Dishman, Washington on complainant's line to Bend, Oregon on Oregon Trunk; plaster, aggregate (Perlite) from Dant, Oregon on Oregon Trunk to Metaline Falls, Washington on complainant's line; and wallboard from St. Helens, Oregon on SP&S to Dishman, Washington on complainant's line, all as named in NPCFB Tariff No. 2-L, Agent W. R. Watson's I.C.C. No. 862.

6. That through routes and joint through rates now exist and have for many years existed for the interchange of traffic at Spokane, Washington between defendants SP&S System and certain other railroads subject to the provisions of the Interstate Commerce Act, to-wit, Great Northern Railway Company (hereinafter called "Great Northern"), Northern Pacific Railway Company (hereinafter called "Northern Pacific"), and their connections, [fol. 299] covering, both eastbound and westbound, and without limitation or restriction as to length of haul over the lines of said Great Northern and Northern Pacific, all freight traffic of whatsoever nature moving between points on said defendants' lines, on the one hand, and all other parts of the United States generally east of Spokane, and Canada and Mexico, on the other. Appendix B hereto attached and made a part hereof sets forth the tariffs and territorial application of the joint through rates in this paragraph described, together with the commodities to

which such rates are applicable. The tariffs thus shown are representative and not necessarily all-inclusive.

7. That complainant has requested defendants SP&S System to enter into arrangements for the establishment of joint through rates and divisions on all traffic as above described in paragraph 6 hereof via Spokane, Washington as an interchange point to the same extent as granted by said defendants to said Great Northern and Northern Pacific, but defendants have refused and still refuse so to do.

8. That by reason of the limited application of such joint through rates as now exist between complainant and defendants and by reason of the refusal of defendants SP&S System to enter into joint through rates similar to those presently enjoyed by said Great Northern and Northern Pacific, as above described, complainant is restricted in its participation in freight traffic either originating at or destined to points on the lines of defendants SP&S System (except to the limited extent described in paragraph 5 hereof) to the handling of said traffic between [fol. 300] junctions of complainant with said Great Northern or Northern Pacific and their connections at points on or east of the Missouri River, and also at points in the state of Montana, (such junction points being hereinafter referred to as "Eastern gateways"), and points east and south thereof, thereby depriving complainant of the haul over its lines between Spokane and said Eastern gateways, a distance of 1,460 miles in the case of Minnesota Transfer, Minnesota, which is a representative Eastern gateway. That the only rates now available via complainant and its connections via said Spokane interchange on traffic between points on said defendants' lines and points on the lines of complainant and its connections (other than those described in paragraph 5 hereof) are combination rates comprised of local factors between Spokane and points on the lines of said defendants and between Spokane and points on the lines of complainant and its connections respectively, which combination rates are invariably substantially higher than the joint through rates now effective via said Great Northern and Northern Pacific in connection with said defendants, and which said

combination rates are unjust and unreasonable in violation of Section 1 of the Interstate Commerce Act, and will not attract freight traffic on a competitive basis with said through rates. In order to participate in westbound traffic which originates on the lines of complainant and its connections and destined to points on the lines of defendants SP&S System, complainant is obliged to yield such traffic to the Great Northern or Northern Pacific or their connections at said Eastern gateways, thereby de-
[fol. 301] priving complainant of a substantial portion of the line haul to which it is normally entitled. That, except as hereinabove otherwise noted, on traffic originating on the lines of defendants SP&S System and destined to points generally east of Spokane, Washington, by reason of the restriction of joint through rates via Spokane to said Great Northern and Northern Pacific, complainant cannot share in such traffic from Spokane, Washington, but is restricted to a haul from the Eastern gateway to destination or point of interchange with its connections, thereby depriving complainant of that portion of the haul from Spokane to the Eastern gateway.

That by reason of said refusal of said defendants SP&S System to establish such joint through rates via Spokane, complainant is unable to compete with said Great Northern and Northern Pacific for traffic between points on the lines of the SP&S System and points on complainant's lines in the state of Montana or west of the Missouri River which are common points with said Great Northern and Northern Pacific, or either of them.

That by reason of such refusal complainant is further at a disadvantage, even in cases where joint rates are in effect as described in paragraph 5 hereof, with respect to traffic between points on the lines of the SP&S System and points on complainant's lines, for the reason that because of the restrictive and limited application of the few joint through rates which are in effect via Spokane it is impossible for shippers or consignees to avail themselves of diversion and transit privileges which otherwise would be available to them.

[fol. 302] That by reason of such refusal complainant is further placed at a disadvantage with respect to traffic originating at or destined to local non-competitive points

upon its lines west of the Missouri River, because shippers, in order to obtain the lowest combination of local rates, are obliged to route traffic via the nearest junction of said Great Northern or Northern Pacific, thereby depriving complainant of a substantial line-haul.

9. That, the extreme easterly terminus of defendants SP&S System being Spokane on the SP&S, the establishment of a full line of joint rates via Spokane would not deprive said defendants or any of them of any portion of their line-haul.

10. That complainant's line between Spokane, Washington and said Eastern gateways is direct and without circuity, the distance via complainant's line, for example, between Spokane and Minnesota Transfer being 1,460 miles, via the Great Northern 1,429 miles, and via the Northern Pacific 1,486 miles, and that the opening of an additional through route for all traffic via complainant's line would provide adequate and more efficient and more economic transportation.

11. That the Commission should prescribe just, reasonable, non-discriminatory and competitive through routes and joint through rates applicable to the transportation of freight traffic via Spokane, Washington over the lines of defendants SP&S System and of complainant and its connections, together with all terminal services and privileges, transit privileges, including diversion and recon-
[fol. 303] signment, allowances and all other rights and privileges available to shippers and receivers of freight, where such routes and rates do not already exist via complainant's line, to the same extent as now are and hereafter may be in effect via Spokane over the lines of defendants SP&S System and said Great Northern and Northern Pacific and their connections.

When and if such routes and rates are established and prescribed by the Commission, the proceeding should be held open so that the complainant and defendants will be given an opportunity voluntarily to establish just, reasonable, equitable, non-preferential and non-prejudicial divisions, failing in which the proceeding should be assigned

for furth r hearing so that the Commission may d termine and prescribe just, reasonable, equitable, non preferential and non-prejudicial divisions as between complainant and the defendants. It is not complainant's intention, and complainant does not request, that any order be entered in this proceeding prescribing divisions for complainant's connections lower or on different bases than those then currently accruing to said connections on any traffic of similar nature and length of haul via any presently existing route or routes to or from points on the SP&S System.

12. Complainant does not seek in this proceeding exclusive joint through rates or through routes restricted to its line between said Eastern gateways and points east thereof on any traffic originating or terminating on lines of defendants SP&S System and interchanged between complainant and said defendants at Spokane, Washing- [fol. 304] ton, but, on the contrary, it is complainant's purpose and desire that the routing of such traffic east of said Eastern gateways remain free and open to all carriers serving said gateways to the same extent as now enjoyed by such carriers.

13. That by reason of the facts stated in the foregoing paragraphs, the failure and refusal of the defendants to establish competitive through routes and joint through rates and charges applicable to the freight traffic and between the points hereinabove described constitutes violations by defendants of Section 1(4) and Sections 3(1) and 3(4) of the Interstate Commerce Act, and deprives the public and complainant of the use of available and reasonable through routes and reasonable non-discriminatory through rates which are necessary and desirable in the public interest.

Wherefore, complainant prays that defendants be severally required to answer the charges herein; that after due hearing and investigation an order be made commanding said defendants and each of them to cease and desist from the aforesaid violations of the Interstate Commerce Act, and to require said defendants to establish, put in force, maintain and apply in the future to the

transportation of the freight traffic hereinbefore described, between points on the lines of defendants SP&S, Oregon Electric and Oregon Trunk and points on the lines of complainant and its connections, in lieu of the existing unjust, unreasonable and discriminatory routes and combination rates and charges via Spokane, Washington, just, reasonable, non discriminatory and competitive through routes [fol. 305] and joint through rates and charges via Spokane, where such routes and rates do not already exist via complainant's line, with respect to the traffic and between the places and territories hereinbefore described, together with all terminal services and privileges, transit privileges, including diversion and reconsignment, allowances and all other rights and privileges now or hereafter available to shippers and receivers of freight via the other routes described in paragraph 6 hereof; that the Commission, by order, determine and prescribe just, reasonable, equitable, non-preferential and non-prejudicial divisions of the said joint rates and charges herein sought, in the event the defendants fail and refuse voluntarily to establish such divisions; and that such further order or orders be made as the Commission may consider proper and necessary in the premises.

Dated at Chicago, Illinois, the 27th day of August, 1954.

Respectfully submitted,

Carson L. Taylor, W. J. Quinn, Thos. H. Maguire, R. K. Merrill, 888 Union Station, Chicago 6, Illinois, B. E. Lutterman, 609 White Building, Seattle 1, Washington, Attorneys for Complainant.

(Counsel's note. App. A and App. B are identical to App. A and App. B to Exhibit A of complaint of C.M. St. P. & P. RR Co., in the District Court. In the circumstances it is deemed unnecessary to print them here.)

[fol. 306]

BEFORE THE INTERSTATE COMMERCE COMMISSION

[Title omitted]

ORDER PERMITTING FILING OF AMENDED COMPLAINT —September 15, 1954

In the Matter of Complainant's Petition for Leave to File an Amended Complaint

Present: Charles D. Mahaffie, Commissioner, to whom the above-entitled matter has been assigned for action thereon.

Upon consideration of the record in the above-entitled proceeding, of complainant's petition for leave to file an amended complaint dated August 27, 1954, attached thereto, and reply to the petition by the Traffic Bureau of Sioux Falls, intervener, concurring therein; and it appearing that the amended complaint sets forth, without change or addition, the same issues and seeks the same relief as the original complaint, and names as additional defendants all of the connecting carriers over whose routes the proposed rates would apply:

It is ordered, That the complaint in this proceeding be, and it is hereby, amended in accordance with the document hereto attached marked "Amended Complaint", dated August 27, 1954.

It is further ordered, That a copy of the amended complaint be served upon each of the defendants therein named, and that a copy of this order be served upon each of the parties to this proceeding.

It is further ordered, That this proceeding be, and it is hereby, assigned for hearing November 2, 1954, at 9:30 o'clock a.m., United States Standard Time, at the United States Customs House, 610 South Canal Street, Chicago, Ill., before Examiner Lyman H. Dishman.

Dated at Washington, D. C., this 15th day of September, A. D., 1954.

By the Commission, Commissioner Mahaffie.

George W. Laird, Secretary.

[SEAL]

[fol. 307]

BEFORE THE INTERSTATE COMMERCE COMMISSION

[Title omitted]

ANSWER OF DEFENDANTS CHICAGO AND NORTH WESTERN RAILWAY COMPANY and CHICAGO, SAINT PAUL, MINNEAPOLIS AND OMAHA RAILWAY COMPANY—Filed October 18, 1954

Come now the defendants, Chicago and North Western Railway Company and Chicago, Saint Paul, Minneapolis and Omaha Railway Company, and without waiving the motions made in this proceeding by these defendants or the grounds in support thereof, which motions are made and filed simultaneously herewith, these defendants for answer to the amended complaint herein:

I.

Deny said amended complaint and each and every allegation therein contained, except as hereinafter specifically admitted.

[fol. 308]

II.

Admit that each of these defendants is a common carrier engaged in the transportation of property between points in the United States, and as such common carrier is subject to the provisions of the Act to Regulate Commerce, approved February 4, 1887, and the acts amendatory thereof or supplementary thereto.

III.

Refer to the applicable tariffs for a correct statement of the charges referred to or complained of herein.

IV.

Deny that anything done or omitted by these defendants with respect to the subject matter of said amended complaint is in violation of the law, and that these defendants should be subjected to any adverse order; and further deny that the complainant is entitled to the relief prayed, or any relief whatsoever.

Wherefore, having fully answered, these defendants pray that the amended complaint may be dismissed.

Chicago and North Western Railway Company and Chicago, Saint Paul, Minneapolis and Omaha Railway Company, By Lowell Hastings, Dreman J. Slater, Fred O. Steadry, Jordan J. Hillman, Its Attorneys.

[fol. 309] Please address all communications to:

Fred O. Steadry, Commerce Counsel, Chicago and North Western Railway System, Room 1422—400 West Madison Street, Chicago 6, Illinois.

Certificate of Service (omitted in printing).

[fol. 310]

BEFORE THE INTERSTATE COMMERCE COMMISSION

[Title omitted]

ANSWER OF C.B. & Q. R.R. Co.
—Filed October 18, 1954

Comes now Chicago, Burlington & Quincy Railroad Company, one of the additional defendants named in the amended complaint in this proceeding, and, without waiving or modifying in any respect the position taken in the several motions contemporaneously filed by it with respect to the amended complaint, respectfully:

1. Admits that it is a corporation engaged in business as a common carrier by railroad.

2. Refers to the tariffs named in the complaint and to all other applicable tariffs for such information as is pertinent to any issue herein.

3. Denies that it has violated or is violating any of the statutes or laws of the United States, or that anything done or omitted by it with respect to the subject matter of said complaint is in violation of law; denies that any rate, charge or practice referred to in said complaint, in which this

defendant participates, is unlawful; denies that this defendant should be subjected to any adverse order, and denies that the complainant is entitled to the relief prayed for or any other relief.

[fol. 311] 4. Each and every allegation not herein admitted is hereby denied.

Respectfully submitted,

Walter McFarland, Russell B. James, Attorneys for Defendant, Chicago, Burlington & Quincy Railroad Company.

Dated at Chicago, Illinois, October 15, 1954.

Due Date: October 18, 1954.

[fol. 312]

BEFORE THE INTERSTATE COMMERCE COMMISSION

[Title omitted]

ANSWER OF C.R.I. & P.R.R.C. Co.
—Filed October 22, 1954

Comes now Chicago, Rock Island and Pacific Railroad Company, one of the additional defendants named in the amended complaint in this proceeding, and, without waiving motions made in this proceeding by this defendant or the grounds in support thereof, which motions are made and filed simultaneously herewith, this defendant for answer to the amended complaint herein:

1. Admits that it is a corporation engaged as a common carrier by railroad.

2. Refers to the tariffs named in the complaint and to all other applicable tariffs for such information as is pertinent to any issue herein.

3. States that it was not a defendant in the original complaint, and that it did not intervene or in anywise participate in the hearing or hearings or proceedings conducted in connection therewith.

[fol. 313] 4. Denies that it has violated or is violating any of the statutes or laws of the United States; or that anything done or omitted by it with respect to the subject matter of said complaint is in violation of law; denies that any rate, charge or practice referred to in said complaint, in which this defendant participates, is unlawful; denies that this defendant should be subject to any adverse order, and denies that the complainant is entitled to the relief prayed for or any other relief.

5. Each and every allegation not herein admitted is hereby denied.

Respectfully submitted,

Chicago, Rock Island and Pacific Railroad Company, By Bruce Dwinell, Eaton Adams, Harry E. Boe, Attorneys for Defendant Chicago, Rock Island and Pacific Railroad Company.

Dated at Chicago, Illinois, October 21st, 1954.

Due Date: October 25, 1954.

Please address communications to:

Harry E. Boe, Room 1025 La Salle Street Station, Chicago 5, Illinois.

[fol. 314] Certificate of Service (omitted in printing).

[fol. 315]

BEFORE THE INTERSTATE COMMERCE COMMISSION

[Title omitted]

JOINT AND SEPARATE ANSWER OF DEFENDANTS SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY, OREGON ELECTRIC RAILWAY COMPANY AND OREGON TRUNK RAILWAY TO AMENDED COMPLAINT—Filed October 22, 1954

The defendants above named, without waiver of their rights to have reconsidered by the Commission the order herein dated September 15, 1954, by Commissioner Mahaffie, as asserted in their "Petition for Reconsideration By and Oral Argument Before the Interstate Com-

merce Commission Respecting Order Amending Complaint" and subject to defendants' "Motion to Strike or in the Alternative to Require Complainant to Make More Definite and Certain" filed contemporaneously herewith, make this their answer to the amended complaint in this proceeding and respectively (sic) state:

1. Admit the allegations of paragraph 1 of said amended complaint.

[fol. 316] 2. Admit the allegations of paragraph 2 of said amended complaint except the allegations therein contained concerning the alleged interchange of freight traffic between the complainant and the defendant Spokane, Portland and Seattle Railway Company and allege that the facts with respect to such interchange are as hereinafter stated.

3. Answering paragraph 3 of said amended complaint defendants admit all allegations thereof except the allegation that the eastern terminus of defendants' system is Spokane, Washington, located on the line of the SP&S, and allege that the facts with respect thereto are as stated hereinafter.

4. Admit the allegations of paragraph 4 of said amended complaint.

5. Answering paragraph 5 of said amended complaint defendants deny that defendant Spokane, Portland and Seattle Railway Company, as an independent line, has any physical track connection or interchange facilities at Spokane, Washington, with complainant, and allege that the facts with respect to the subject matter of paragraph 5 of said complaint are as follows: defendants, as separate corporate entities, own certain lines of railroad in the [fol. 317] states of Oregon and Washington. The line of defendant SP&S so owned extends easterly in the State of Washington to Marshall Junction, Washington, where it connects with the line of Northern Pacific Railway Company, and to Fort Wright, Washington, where it connects with the line of Great Northern Railway Company. Under existing contract with Great Northern Railway Com-

pany and Northern Pacific Railway Company, which contract is cancelable upon six months' written notice, defendant SP&S is permitted to operate its trains over the tracks of said companies from the respective points of connection hereinbefore referred to, to wit: Fort Wright and Marshall Junction, to the passenger terminals of Great Northern Railway Company and Northern Pacific Railway Company at Spokane, Washington, also to the freight terminal of Great Northern Railway Company at Hillyard, Washington, and also to the freight terminal of Northern Pacific Railway Company at Yardley, Washington. Under said contract Great Northern Railway Company and Northern Pacific Railway Company furnish said defendant with certain terminal services at the aforesaid points, including the handling of interchange traffic with complainant.

For a correct statement of the rates referred to or complained of in the amended complaint, defendants refer [fol. 318] the Commission to the tariffs duly filed with said Commission publishing said rates.

6. Answering paragraph 6 of said amended complaint defendants admit that through routes and joint rates exist and have existed for many years for the interchange of traffic between defendants and Great Northern Railway Company and between defendants and Northern Pacific Railway Company, said through routes and joint through rates covering freight traffic generally moving both eastbound and westbound between points on defendants' lines, on the one hand, and generally other parts of the United States, Canada, and Mexico, on the other, and allege that defendants and Great Northern Railway Company are connecting railroads operated in conjunction and under a common management or control, lying between the termini of such through routes, and that defendants and Northern Pacific Railway Company are connecting railroads operated in conjunction and under a common management or control, lying between the termini of such through routes; and deny the allegations of paragraph 6 of said amended complaint save as hereinbefore admitted or stated otherwise.

7. Answering paragraph 7 of said amended complaint defendants admit that the complainant has requested that defendants enter into arrangements for the establishment [fol. 319] of joint through rates and divisions on certain traffic and defendants admit that said request has been declined at the direction of Great Northern Railway Company and Northern Pacific Railway Company, who control the traffic policies of defendants.

8. Answering paragraphs 8 through 13, inclusive, of said amended complaint, defendants specifically deny the following allegations:

(a) That the establishment of a full line of joint through rates via Spokane would not deprive the defendants, or any of them, of any portion of their line haul.

(b) That the opening of an additional through route for all traffic via complainant's line would provide adequate and more efficient and more economic transportation.

(c) That the public and complainant are deprived of the use of available and reasonable through routes and reasonable, nondiscriminatory through rates which are necessary and desirable in the public interest.

Defendants further deny that the Commission should prescribe any through routes or joint through rates as alleged; deny all material allegations in said paragraphs save as admitted, qualified or otherwise herein stated; [fol. 320] deny that defendants, or any of them, have violated or are violating any of the statutes or laws of the United States or that anything done or omitted by them, or any of them, with respect to the subject matter of said amended complaint is in violation of law; deny that any of the rates referred to in said paragraphs are unreasonable, prejudicial, discriminatory or unlawful; deny that defendants, or any of them, should be subjected to any adverse order; deny that the complainant is entitled to the relief prayed for or any other relief; and deny that the said complainant is entitled to any haul on any of the traffic described in said paragraph.

9. Each and every allegation of the amended complaint not hereinbefore admitted, qualified or otherwise stated, is hereby specifically denied.

10. Further answering, defendants allege that if complainant should be granted the relief prayed for in the amended complaint, or any part thereof, defendants would be required, without their consent, to embrace within such through routes substantially less than the entire length of their railroads and of the intermediate railroad of either Great Northern Railway Company or Northern Pacific Railway Company which lies between the termini of the proposed through routes, said Great Northern Railway [fol. 321] Company and said Northern Pacific Railway Company each being operated in conjunction and under common management or control with defendants, and that such relief would be contrary to and in violation of the provisions of Section 15(4) of the Interstate Commerce Act.

Wherefore said defendants pray that the complaint in this proceeding be dismissed.

Charles A. Hart, Fletcher Rockwood, Attorneys for Defendants, Spokane, Portland and Seattle Railway Company, Oregon Electric Railway Company and Oregon Trunk Railway, 1410 Yeon Building, Portland 4, Oregon.

[fol. 323]

BEFORE THE INTERSTATE COMMERCE COMMISSION

[Title omitted]

AMENDED PETITION OF EZRA TAFT BENSON, SECRETARY OF AGRICULTURE OF THE UNITED STATES, FOR LEAVE TO INTERVENE—Filed October 27, 1954

Comes now Ezra Taft Benson, Secretary of Agriculture of the United States, and amends his petition for leave to intervene filed in this proceeding on June 24, 1954. The Secretary has an interest in the issues presented in the amended complaint filed herein on August 27, 1954; he desires to intervene in the proceeding, as enlarged by the amended complaint; and his intervention will not unduly broaden the issues therein.

I

The amended complaint brings into the issue the proposed establishment of competitive joint through rates applicable on freight traffic moving via the Spokane, Washington, gateway between points in the United States served by the [fol. 324] complainant and its connections and points in Oregon and Washington served by the Spokane, Portland and Seattle Railway Company, Oregon Electric Railway Company, and the Oregon Trunk Railway.

II

The interest of the Secretary, as stated in the original petition for leave to intervene, is based upon section 201 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1291) and section 203(j) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1622).

III

Large quantities of agricultural products are produced in and distributed from, to, and within the territories involved in the amended complaint. The States of Oregon and Washington are surplus producing areas for numerous agricultural products, and Spokane is an important gateway for their distribution.

IV

The defendants' present combination rates between points on their lines and points on the lines of the complainant and its connections, via Spokane, are unjust and unreasonable in violation of section 1(4) of the Interstate Commerce Act. The defendants' failure to establish competitive through routes and joint through rates and charges applicable on all traffic between points on their lines and points on the lines of complainant and its connections, via Spokane, constitutes violations of sections 1(4), 3(1) and 3(4) of the Interstate Commerce Act.

[fol. 325] Wherefore, the Secretary of Agriculture requests that he be permitted to intervene in this proceeding, as enlarged by the amended complaint, and that he there-

after be treated as a party thereto, all according to the Commission's General Rules of Practice.

Respectfully submitted, by direction of Ezra Taft Benson, Secretary of Agriculture of the United States.

Chas. B. Bowling, Chief, James L. Pease, Assistant Chief, Freight Rate Service Branch, Agricultural Marketing Service, Charles W. Bucy, Associate Solicitor, Henry A. Cockrum, Attorney, United States Department of Agriculture, Washington 25, D.C.

[fol. 326]

BEFORE THE INTERSTATE COMMERCE COMMISSION

[Title omitted]

ORDER GRANTING SECRETARY OF AGRICULTURE LEAVE TO INTERVENE—October 27, 1954

In the Matter of Petition for Leave to Amend Intervening Petition and for Leave to Intervene.

Present: Charles D. Mahaffie, Commissioner, to whom the above-entitled matter has been assigned for action thereon.

Upon consideration of the record in the above-entitled proceeding and of the complaint therein, as amended, and the petition filed on behalf of the Secretary of Agriculture:

It is ordered, That the petition of the Secretary of Agriculture, for leave to intervene in this proceeding be, and it is hereby, amended in accordance with the document hereto attached marked "Amended Petition of Ezra Taft Benson, Secretary of Agriculture of the United States, for leave to intervene:"

It is further ordered, That the Secretary of Agriculture of the United States, be, and he is hereby, permitted to intervene and be treated as a party to this proceeding, as amended, with the right to have notice of and appear at the taking of testimony, produce and cross-examine wit-

nesses and be heard on brief and on oral argument, if oral argument is heard: *provided, however*, That the permission to intervene herein granted shall not be construed to allow interveners to introduce evidence which will unduly broaden the issues raised in the complaint;

It is further ordered, That a copy of the Amended Petition for Leave to Intervene, and a copy of this order, be served upon each of the parties to this proceeding.

Dated at Washington, D. C., this 27th day of October, A. D. 1954.

By the Commission, Commissioner Mahaffie.

George W. Laird, Secretary

[SEAL]

[fol. 327]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 31466

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, Complainant,

v.

SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY, OREGON ELECTRIC RAILWAY COMPANY AND OREGON TRUNK RAILWAY, et al., Defendants.

REPLY TO JOINT AND SEPARATE ANSWER OF DEFENDANTS SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY, OREGON ELECTRIC RAILWAY COMPANY AND OREGON TRUNK RAILWAY TO AMENDED COMPLAINT—Filed November 23, 1954

The above-named complainant replies to the affirmative allegations set forth in the joint and separate answer of defendants Spokane, Portland and Seattle Railway Company, Oregon Electric Railway Company and Oregon Trunk Railway to the amended complaint as follows:

1. Complainant denies knowledge or information sufficient to form a belief as to the affirmative matter set forth in lines 9 to 30 inclusive in paragraph 5 of the answer, wherein it is alleged in substance that the line of defendant, SP&S extends easterly in the State of Washington to Marshall Junction, where it connects with the line of Northern Pacific Railway Company, and to Fort Wright, Washington, where it connects with the line of Great Northern Railway Company; and wherein the terms of an alleged existing contract with said Northern Pacific Rail-[fol. 328] way Company and Great Northern Railway Company are set forth and described, wherefore complainant specifically denies said affirmative allegations.

2. Replying to paragraph 6 of said answer, complainant specifically denies that said answering defendants, or any of them, and Northern Pacific Railway Company or Great Northern Railway Company, or either of them, are connecting railroads operated in conjunction, or under a common management or control, in any respect whatsoever.

3. Replying to paragraph 7, complainant specifically denies that the request of complainant for the establishment of joint through rates and divisions has been declined by the answering defendants at the direction of Northern Pacific Railway Company and Great Northern Railway Company, or either of them, or that either of said last named railway companies, controls the traffic policies of said defendants, or of any of them.

4. Replying to paragraph 10, complainant specifically denies that if the relief prayed for in the amended complaint, or any part thereof, should be granted, the answering defendants would be required to embrace within such through routes less than the entire length of their railroads, and complainant further specifically denies that said Great Northern Railway Company, said Northern Pacific Railway Company, or either of them, are operated in conjunction or under common management or control with the answering defendants, or any of them, or that the relief sought in [fol. 329] the complaint would be contrary to or in violation of the provisions of Section 15(4) of the Interstate Com-

merce Act, or that said Great Northern Railway Company, said Northern Pacific Railway Company, or either of them, are, insofar as this proceeding is concerned, entitled in fact or by law to the benefit or protection of any of the provisions of said Section 15(4).

Wherefore, complainant prays for the relief set forth in its amended complaint herein.

Respectfully submitted,

C. L. Taylor, W. J. Quinn, Thos. H. Maguire, R. K. Merrill, 888 Union Station, Chicago 6, Illinois; B. E. Lutterman, 609 White Building, Seattle 1, Washington, Attorneys for Complainant.

Certificate of Service (omitted in printing).

[fol. 330]

BEFORE INTERSTATE COMMERCE COMMISSION

No. 31466

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

v.

SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY, et al.

REPORT PROPOSED BY L. H. DISHMAN, EXAMINER—
Served July 27, 1956

1. Through routes and joint rates found necessary and desirable in the public interest via Spokane, Wash., in connection with complaint, on certain commodities from and to points on the Spokane, Portland and Seattle Railway Company System Lines in Oregon and Washington.

2. Rates on the same commodities from and to the same points over complainant's routes via Spokane found unreasonable and unduly prejudicial to and preferential of shippers and receivers.

3. Order entered requiring removal of unlawfulness found to exist and establishment of through routes and joint rates found reasonable.

Thomas H. Maguire, R. K. Merrill, W. J. Quinn, Carson L. Taylor and B. E. Lutterman for complainant.

Fletcher Rockwood and Charles A. Hart for certain defendants and interveners.

Harry E. Boe, Fred O. Steadry, Jordan J. Hillman, Richard Musenbrock, and Russell B. James for other defendants.

L. E. Torinus, Edwin C. Matthias, Curtis H. Berg, and R. Paul Tiossem for the Great Northern Railway Company; G. Zan Golden and M. L. Countryman, Jr., for the Northern Pacific Railway Company; Charles B. Bowling, Charles W. Buey, Henry A. Cockrum, and J. L. Pease for Secretary of Agriculture; C. W. Ferguson and Thomas W. Dench for Public Utilities Commission of the State of Oregon; C. L. Doherty for Public Utilities Commission of the State of South Dakota; and John L. Fox for Public Utilities Commission of the State of Idaho, and S. W. W. Carr for Traffic Bureau of Sioux Falls, S. Dak., interveners.

Frank A. Enme, Henry Beck, Mark Houston, Paul K. Byers, Calvin L. Blaine, Charles E. Blaine and Lee J. Quasey for other interveners.

The complainant, sometimes called the Milwaukee, is a common carrier by railroad, operating in interstate commerce within the States of Washington, Idaho, Montana, North Dakota, South Dakota, Minnesota, Wisconsin, Michi- [fol. 331] gan, Iowa, Illinois, Indiana, Missouri and Nebraska. By complaint filed February 26, 1954, as amended August 27, 1954, it alleges that the refusal of the Spokane, Portland and Seattle Railway Company, called the S.P. & S.; the Oregon Electric Railway Company called the Oregon Electric; and the Oregon Trunk Railway, called the Oregon Trunk, generally referred to collectively as the S.P. & S., except where the context shows that this abbreviation refers to the first aforementioned carrier only, and the

other defendants, sometimes referred to as connections, to establish and maintain competitive through routes and joint through rates and charges applicable to freight traffic of whatsoever nature moving between points on the S.P. & S., on the one hand, and points throughout the United States generally east of Spokane, Wash., and Canada and Mexico, on the other, in connection with the complainant through Spokane, referred to as the Spokane gateway, results in violations of sections 1(4), 3(1), and 3(4) of the Interstate Commerce Act, and deprives the public and the complainant of the use of available and reasonable through routes and reasonable nondiscriminatory through rates which are necessary and desirable in the public interest.

The complainant asks the Commission to require the defendants to establish through routes and joint through rates and charges via Spokane on freight traffic, in connection with the complainant and its connections, applicable to freight traffic, together with all terminal services, allowances, transit, and other privileges, including diversion and reconsignment, in connection therewith, where such do not already exist via the aforementioned gateway in connection with complainant, on the same basis as may now or hereafter be available from and to S.P.&S. points over routes through the Spokane gateway in connection with [fol. 332] the Great Northern Railway Company and the Northern Pacific Railway Company, sometimes referred to collectively as the northern lines and separately as the Great Northern and the Northern Pacific, respectively, and their connections. The complainant also asks the Commission to determine and prescribe just, reasonable, equitable, nonpreferential and nonprejudicial divisions of the joint rates and charges sought, in the event the defendants fail and refuse voluntarily to establish such divisions.

Rates and charges, and differences therein, named in this report are in amounts per 100 pounds, and are those in effect May 1, 1954.

Appendix A, hereto, shows the territorial application of joint through rates via Spokane, on various commodities and classes of traffic in connection with the S.P.&S., and the Northern lines. Appendix B shows the same in connection with the S.P.&S., and the Milwaukee.

The complainant asserts that the purpose of the complaint is to preserve to its railroad the opportunity of at least soliciting traffic in which it feels it is entitled lawfully to share, and to open up territory via its line now closed to shippers of commodities to and from the Pacific Northwest. The complainant seeks the establishment of joint through rates from and to points served exclusively by it as well as common points, and points reached by connecting lines.

Interveners in support of the complaint include the Secretary of Agriculture of the United States, the Western Forest Industries Association, the National Livestock Producers Association, the Chicago Producers Association, the American National Cattlemen's Association, the National Wool Growers Association, and the Traffic Bureau of Sioux Falls, S. Dak. The only interveners in opposition to the [fol. 333] complaint are the Great Northern and the Northern Pacific, each of which rail carriers owns 50 percent of the capital stock and bonds of the S.P.&S., and the operating and nonoperating labor organizations of those carriers. The Idaho Public Utilities Commission, the Public Utilities Commissioner of Oregon,[3] and the Public Utilities Commission of South Dakota, intervened, but offered no evidence and took no position respecting the issues involved.

Motions.—Before proceeding to a discussion of the issues involved and the evidence relating thereto, it is necessary here to consider certain motions made by the parties. The S.P.&S. lines were the only defendants named in the original hearing at which evidence in support of the complainant was adduced, named 405 additional defendants, only a few[4]

---

[3] By letter dated October 18, 1955, addressed to the Commission, the Public Utilities Commissioner of Oregon advises that he will support any decision which may alleviate the annual car shortages in that State, and which would afford additional transportation services and transit privileges for Oregon shippers. Under date of October 15, 1955, the Idaho Public Utilities Commission withdrew from the case.

[4] The Chicago and North Western Railway Company, called the North Western, and its subsidiary, the Chicago, St. Paul, Minneapolis and Omaha Railway Company; The Chicago, Burlington & Quincy Railroad Company, called the Burlington; and The

of which have participated actively in this proceeding. Collectively these participants are called the W.T.L. lines. Pursuant to the agreement of the parties the record made at the initial hearing was allowed to stand subject to the right of the defendants and supporting interveners to cross-[fol. 334] examine further the witnesses who had testified at that hearing. With one exception, those whom the adverse parties desired to cross-examine further were made available for this purpose at subsequent hearings. The exception was witness Hemphill whose testimony relates to rates on lumber from Eugene, Oreg., to destinations east of Spokane. Because it was not possible to cross-examine this witness further, the defendants, on brief, move that his testimony be stricken. The complainant is willing that this testimony not be considered. The motion should be sustained.

As previously stated, the complaint contains an allegation that section 3(1) of the act has been violated. Prior to the initial hearing, the S.P. & S. filed a motion with the Commission to strike that allegation from the complaint. The motion was made on the ground that a complainant railroad cannot raise in its own behalf an issue under section 3(1) against another railroad. The motion was overruled by order dated July 20, 1954. After the amended complaint was filed certain of the newly added defendants made similar motions to strike therefrom the section 3(1) allegation. These motions were overruled by order dated November 5, 1954. On brief, these defendants and the S.P. & S. renew their motions to strike that allegation from the complaint, and they also move to strike all evidence received, objected to when offered, which would be relevant to that issue if properly before the Commission. In *Denver & R.G.W.R. Co.* v. *Union Pac. R. Co.*, 287 I.C.C. 611, 619, hereinafter referred to as the *Rio Grande* case, the Commission, in dealing with a similar question, said:

Minneapolis & St. Louis Railway Company, called the St. Louis Railway, and the Chicago, Rock Island and Pacific Railroad Company, called the Rock Island, and its subsidiary, the Peoria Terminal Company.

[fol. 335] We agree that complainant, a railroad, could not raise, in its own behalf, an issue under section 3(1) against another railroad. Intervening shippers, however, have raised such an issue. Testimony, pro and con, was received on this issue and we think it has been fairly tendered here for decision.

A conclusion similar to the above was reached by the Commission in *American Barge Line Co.* v. *Alabama, G.S.R. Co.*, 296 I.C.C. 247, 266. In view of the foregoing, the previous denials of defendants' motions to strike the allegation of section 3(1) of the act from the complaint should be affirmed, and the motions to strike the evidence relating to that issue should be overruled.

Exhibits 112 and 113 of record, introduced by the railroad interveners in support of the defendants, contain lists of individual lumber mills and the capacity of each located at points in Washington, Oregon, Idaho, and Montana. Objection by the complainant to the receipt in evidence of these exhibits, upon the ground that the contents of the exhibits are not relevant to the issues in this proceeding since most of the mills shown are not located in S.P.&S. territory, was overruled by the examiner and the exhibits were received in evidence. On brief, the complaint renews its objection and seeks to have these exhibits and all testimony relating thereto stricken from the record. Inasmuch as the objection goes to the weight which should be accorded this evidence, the objection should be overruled.

Routes.—Routes are available to and from points on the S.P.&S., via Spokane, in connection with the complainant and its eastern connections, but generally shippers must pay combination rates when using such routes. The maintenance of those rates produces higher charges than those [fol. 336] resulting from the joint rates maintained by the S.P.&S., over routes via Spokane, in connection with the northern lines. The higher rates and charges act as deterrents to shippers and, in effect, close the Spokane gateway in a commercial sense insofar as the complainant is concerned. The Commission is asked to require the establishment, through that gateway, in connection with the com-

plainant, through routes and joint rates and charges which would remove the alleged unlawfulness.

The power of the Commission to require the defendants to establish the through routes and joint rates sought is limited by the provisions of section 15(4) of the act, which states that, except as provided in section 3 of the act, and except where one of the carriers is a water line, a railroad may not be required, without its consent, to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith, which lies between the termini of such proposed through route, (a) unless such inclusion of lines would make the through route unreasonably long as compared to another practicable through route which could otherwise be established, or (b) unless the Commission finds that the through route proposed is needed in order to provide "adequate, and more efficient or more economic, transportation." The foregoing provisions are subject to the further proviso that in prescribing through routes, the Commission shall, so far [fol. 337] as is consistent with the public interest, and subject to the foregoing limitations in clauses (a) and (b), give reasonable preference to the carrier by railroad which originates the traffic. Section 15(4) further provides that no through route and joint rates applicable thereto shall be established by the Commission for the purpose of assisting any carrier that would participate therein to meet its financial needs.

Certain interveners in support of the complaint contend that because the routes over which joint rates are sought are in existence and open to traffic at combination rates, and, as previously shown, in certain instances, at joint through rates, the Commission is not called upon to require the establishment of through routes and that, therefore, the limitations on the Commission's power to do so in section 15(4) of the act are not applicable and need not be considered. They insist that the principal task of the Commission here is to determine whether the through rates resulting from the presently applicable combination rates over such through route are in violation of sections 1 and 3 of the act as alleged. The complainant and supporting

interveners argue that there is public need for joint rates via the Spokane gateway, in connection with the S.P.&S., and complainant, equal to the joint rates now maintained via that gateway over the competitive routes composed of the S.P.&S., and the northern lines.

The first question for determination, therefore, is whether or not the present routes via the Spokane gateway com- [fol. 338] posed of the lines of the S. P. & S. and the complainant constitute "through routes" as that term is used in section 15(3) and (4) of the act. As hereinbefore stated and as testified by numerous shippers in this proceeding, the Spokane gateway routes insofar as complainant's lines are involved, with the exceptions listed in appendix B,[3] are not considered as open or through routes commercially, but as routes that are effectually closed to shippers because of the higher combination rates which apply thereover. A finding that such routes should be opened to shippers on a commercial basis by establishing the competitive joint rates sought would result in the establishment of such routes as effective through routes.

In the *Rio Grande* case, *supra*, a proceeding involving the question, among others, whether or not through rates existed via Ogden, Utah, in connection with the Denver & Rio Grande Western Railroad Company and the Union Pacific Railroad Company et al., under circumstances some- [fol. 339] what similar to those herein considered, the Commission said (287 I.C.C. 611, 616):

> In *Thompson* v. *United States*, 343 U. S. 549, decided June 2, 1952, the Supreme Court considered the question of the content of the term "through route" as used in the act, upon an appeal from a decision of a lower court sustaining our order in *Omaha Grain Exc. of Omaha, Nebr.* v. *Missouri Pac. R. Co.*, 278

[3] Since the date of the original hearing, June 1954, rates from and to additional points have been approved by the S. P. & S. on forest products via Spokane in connection with the S. P. & S., and the Milwaukee. As a result thereof, there has been published or approved a full line of joint through rates on those products from all points on the S. P. & S. to most local points on the lines of the Milwaukee east of Spokane.

I.C.C. 519. Therein, we had affirmed a prior finding of division 2 that a through route on grain from points on the Central branch of the Missouri Pacific Railroad Company in Kansas, Concordia and west thereof (Leonora, Kans., was used as a typical origin), to Omaha, Nebr., and Council Bluffs, Iowa, in connection with the line of the Chicago, Burlington & Quincy Railroad Company beyond Concordia, was already in existence and therefore did not have to be established preliminary to the exercise of our power to prescribe reasonable rates under sections 1 and 15(1) of the act. The Court held:

> In short, the test of the existence of a "through route" is whether the participating carriers hold themselves out as offering through transportation service. Through carriage implies the existence of a through route whatever the form of the rates charged for the through service.
>
> In this case there is no evidence that any through transportation service has ever been offered from Lenora to Omaha via the Burlington. The carriers' course of business negatives the existence of any such through route. * * * Through service to points short of Omaha cannot be used as evidence of the existence of a through route to Omaha * * *. Since there is admittedly no evidence that the Missouri Pacific ever offered through transportation service [fol. 340] over the route in question, the Commission's order is without evidentiary support under the accepted tests for determining the existence of a through route.

The Court cited with approval *Beaman Elevator Co.* v. *Chicago & N. W. Ry. Co.*, 155 I.C.C. 313, wherein the Commission held that proof of one shipment on a through bill of lading over a particular route was not sufficient to show the existence of a through route, because, as stated by the Court, "that one shipment was not representative of the carriers' course of business." It thus becomes necessary to determine whether the carriers in this proceeding "hold themselves out

as offering through transportation service" from and to the points here concerned via the Ogden gateway as indicated by their "course of business" in respect of traffic over the routes in question.

In the above-cited proceeding the evidence showed that in a representative year 55 carload shipments of various commodities moved via Ogden on through bills of lading in connection with the Rio Grande and the Union Pacific, as compared with many thousands in the same year, from and to the same points, at joint rates over the Union Pacific routes. There was no indication that any of the defendants therein had ever solicited any traffic for routing over a Rio Grande route via Ogden by which a higher combination rate applied, or had ever used such a Rio Grande route except where called upon to do so by routing specified by the shipper or by a prior connecting carrier. In finding that [fol. 341] there were no through routes, as that term is used in the act, over the Rio Grande via Ogden on the traffic involved therein, and that any order requiring the establishment of such routes, and joint rates over them, must be grounded upon findings, as specified in section 15, that the routes are necessary or desirable in the public interest, and are needed to provide adequate, and more efficient or more economic transportation, it was stated that so far as the record therein showed "the carriers' course of business" was to use the Union Pacific routes except where called upon to use the Rio Grande routes, and that the shipments mentioned which moved over the Rio Grande routes must be regarded as of an isolated nature and as falling in the same category as the shipments held insufficient to show the existence of a through route in *Beaman Elevator Co.* v. *Chicago & N. W. Ry. Co.*, *supra*, cited with approval by the Supreme Court in *Thompson* v. *United States*, *supra*.

The Supreme Court in *Denver & R. G. W. R. Co.* v. *Union Pac. R. Co.*, 351 U. S. 321, in reversing the judgment of one lower court which had upset the order of the Commission in the *Rio Grande* case, and affirming the judgment of another lower court insofar as it affirmed the order of the Commission in that case, stated in pertinent part, as follows: "We adhere to the 'holding out' test of the *Thomp-*

son case. The evidence before the Commission was not such as to compel it to find that the Union Pacific held itself out as offering through service over the Rio Grande lines."

In the instant proceeding, the evidence shows that during 1952, which may be accepted as a representative year, 493 carload shipments were made, on through bills of lading, from origins on the S. P. & S. via Spokane in connection [fol. 342] with the S. P. & S. and the Milwaukee to destinations on the Milwaukee, and 4 carload shipments were made from S. P. & S. points via Spokane, over the lines of those carriers, to points on Milwaukee's connections. The commodities shipped included gasoline and other petroleum products, livestock, forest products, and miscellaneous commodities.

During the same year, 16 carload shipments were made on through bills of lading, in connection with the S. P. & S., and the Milwaukee via Spokane, to destinations on the S. P. & S. Six of these shipments originated at points on the Milwaukee and the remainder at points on Milwaukee's connections. The shipments consisted of livestock, chemicals, motor vehicles, furniture, candy and confectionary, and soaps, cleaning and washing compounds. Thus, during the year in question 513 carload shipments, both eastbound and westbound, were interchanged at Spokane between the S. P. & S., and the Milwaukee, as compared with many thousands in the same year interchanged there between the S. P. & S., and the Northern lines at joint through rates. The record indicates that the foregoing 513 shipments moved at joint through rates. There is no indication that any of the defendants have ever solicited any traffic for routing via Spokane over a Milwaukee-S. P. & S. route by which a higher combination rate applied, or have ever used such a route. As heretofore shown, the joint through rates via Spokane in connection with the S. P. & S., and the Milwaukee apply primarily from and to local points on the lines of the latter. With the exception of the traffic referred to which moved on those rates, "the carriers' course of business" has been and is to use routes via Spokane composed of the S. P. & S., and the Great Northern or the [fol. 343] S. P. & S., and the Northern Pacific. In 1952, the

Milwaukee handled 6,384 carloads of freight which either originated or terminated on the lines of the S.P. & S. but, with the exception of the 513 shipments referred to, the interchanges were made at points east of Spokane, mainly at the Twin Cities or Minnesota Transfer, Minn., both hereinafter called the Twin Cities.

In view of the foregoing, the Commission should find that, with the exceptions heretofore detailed, there are no through routes, as that term is used in the act, between the areas comprised in the complaint, in connection with the S.P. & S. system and the Milwaukee via Spokane.

Physical Location of the Railroads Involved.—The eastern termini of the tracks of the S.P. & S. are at Marshall Junction, Wash., southwest of the Spokane City limits, where it connects with the Northern Pacific, and at Fort Wright, Wash., west of said limits, where it connects with the Great Northern. The S.P. & S. operates trains over the separate tracks of these carriers to and from their respective freight and passenger terminals at Spokane under an agreement entered into in 1910 which is terminable on six months' notice. The agreement also provides that the northern lines will perform certain terminal services for the S.P. & S. at Spokane, including the transfer of cars to and from other lines. Any cars moving via Spokane between the S.P. & S., and the Milwaukee are switched by the Northern Pacific between its freight terminal and the Milwaukee interchange tracks.

From those eastern termini near Spokane, a line of the S.P. & S. extends southwesterly 369 miles, along the north bank of the Snake and Columbia Rivers, through the State [fol. 344] of Washington to Vancouver, Wash., where it crosses the Columbia and Willamette Rivers and enters Portland, Oreg., its southernmost terminus. Another line of the S. P. & S., called the Astoria line, extends from Portland northwesterly along the south bank of the lower Columbia River to the port of Astoria, Oreg., located at the mouth of that river, thence southerly along the Pacific Coast to Seaside, Oreg., a total distance of about 118 miles. These are the main lines of the S. P. & S. There is one S. P. & S. branch line in the State of Washington which

extends northeasterly from Lyle through Klickitat to Goldendale, about 42 miles, and another short branch line in the State of Oregon which extends from United Junction, on the Astoria line, through Veronia to Keasey.

The line of the Oregon Trunk extends from Wishram, Wash., its junction with the S. P. & S., southerly along the Deschutes River to Bend, Oreg. Its trackage is operated jointly with the Union Pacific Railroad. It has no branch lines. The Oregon Electric, is located wholly within the State of Oregon. Its main line extends from Portland in a general southerly direction along the Willamette River to Eugene, Oreg., about 143 miles. It has a branch line extending from Forest Grove Junction to Forest Grove, about 11 miles. Another branch line, known as the Santiam branch, extends along the Santiam River from Albany to Foster, about 32 miles, and a branch off that line, called the Sweet Home branch, which extends from Sweet Home to Dollar, 16 miles. The lines of the S.P.&S., and its subsidiaries are approximately 950 miles in length.

The Milwaukee, which owns and operates approximately 10,600 miles of railroad, serves the North Pacific Coast ports on Puget Sound in the State of Washington and its [fol. 345] lines in western Washington extend south to Longview. It does not serve Portland or any other point in Oregon. Although it serves Spokane, the main line of its Pacific Coast extension by-passes that point and extends eastwardly through Marengo, Wash., Plummer Junction, Idaho, Butte, Mont., Aberdeen, S. Dak., and the Twin Cities to Chicago, Ill. It also has a line which extends south and east of Chicago through Terre Haute, Ind., to Westport, Ind., where it connects with the New York Central Railroad Company. From Aberdeen, S. Dak., it has a line extending southward through Mitchell and Yankton, S. Dak., which, together with other Milwaukee branch lines, serves points in Iowa and Nebraska, including Omaha. The Milwaukee also serves Kansas City, Mo. These lines provide routes between the Pacific Northwest, on the one hand, and the Southwest and East, on the other, which do not require operation through the Twin Cities. The Milwaukee also has a network of secondary main and branch lines in South Dakota, Iowa, Minnesota, and Wisconsin. It reaches the

head of the Great Lakes over the rails of the Northern Pacific from St. Paul to Duluth, Minn., and Superior, Wis. The Northern Pacific and the Great Northern each serves the North Pacific Coast ports in Washington and also Portland. Each operates through the northern tier of States between the North Pacific Coast on the west and the Twin Cities and head of the Great Lakes on the east. The Great Northern also serves eastern South Dakota and Sioux City, Iowa, and has operating rights over the S. P. & S. and Oregon Trunk which, in connection with its own lines south of Bend, enable this carrier to reach Bieber, Calif., where it connects with The Western Pacific Railroad Com-[fol. 346] pany. Between them the northern lines serve the larger cities in northern Idaho, Montana, North Dakota, South Dakota, and Minnesota, many of which are also served by the Milwaukee. Both northern lines connect with the Burlington at Laurel, Mont., where traffic is interchanged. Between the Pacific Northwest, on the one hand, and the southeast, the southwest, and western Iowa, on the other, the routes of the northern lines via Laurel and the Burlington are shorter than routes via the Twin Cities gateway.

Spokane is on the main transcontinental lines of both northern lines. Each of those lines has its own main-line route between Spokane and Portland via Auburn, Wash., in the case of the Northern Pacific and via Everett, Wash., in the case of the Great Northern. As previously indicated, a main line of the S. P. & S. extends from a point near Spokane to Portland.

The W. T. L. lines serve the Twin Cities area. As the Twin Cities gateway is the eastern termini of the northern lines, each of the W. T. L. lines exchanges traffic with those carriers at that gateway which is destined to points east or west thereof. The W. T. L. lines and their connections, defendants herein, reach points throughout official, southern, and southwestern territories.

[fol. 347] *Carriers Operated In Conjunction and Under Common Management or Control.*—The complainant contends that, as the extreme easterly terminus of the lines of the S.P. & S. defendants is Spokane, the establishment of

the routes and joint through rates sought via that point would not deprive those defendants of any portion of their line haul and that, therefore, the provisions of section 15(4) of the act, hereinbefore referred to, are not here applicable. It is the position, however, of the S.P. & S. defendants and the northern lines that the matters hereinafter stated show that the former are operated in conjunction and under common management or control with the latter and that if the complainant herein prevails, the northern lines in conjunction with the S.P. & S. would be short-hauled without their consent in contravention of the act.

Both the stock and the bonds of the S.P. & S. are owned in equal shares by the Great Northern and the Northern Pacific. The Oregon Electric and the Oregon Trunk are wholly owned by the S.P. & S., except for qualifying shares of stock of the latter. The outstanding securities of the S.P. & S. consist of stock of the par value of $40,000,000, issued in 1910 and 1911, and 4 percent bonds due in 1961, of the face value of $73,710,000. Neither the Oregon Electric nor the Oregon Trunk has any outstanding bonds. Prior to March 31, 1953, the former had some outstanding bonds owned by the S.P. & S., but on that date they were cancelled.

[fol. 348] The investment of the S.P.&S. in road and equipment as of December 31, 1954, was $139,170,506; and the gross capital expenditures to December 31, 1954, without deduction for retirements, was $168,181,108. The sources of these gross expenditures was $76,403,278 from the Great Northern and Northern Pacific ($38,201,639 each); outside capital (equipment obligations) $9,310,672, and the S.P.&S. from operations $82,467,158. Most of the latter investment in road and equipment was made possible because the northern lines had not pressed for the payment of interest in default on the outstanding bonds of the S.P.&S. From 1926 to 1952, inclusive, the accrued and unpaid interest on bonds aggregated $79,465,638. As of December 31, 1952, the northern lines forgave and cancelled this amount in its entirety.

In addition to the cancellation of accrued interest on bonds, the northern lines have assisted the S.P.&S. financially in other ways. Over the years they made loans to the

S.P.&S. aggregating $13,708,310, which have been repaid in full. In 1938, for example, they advanced $550,000 to that carrier to enable it to pay taxes. The northern lines assert that such transactions show that the S.P.&S. has been dependent upon them from a financial standpoint, and that they in effect act as bankers for it.

The S.P.&S. has never paid any dividends on the par value of its capital stock of $40,000,000 owned by the northern lines. At an annual rate of 4 percent the dividends, if paid, would have amounted to $1,600,000 a year, which from 1910 [fol. 349] to 1955 would have aggregated $72,000,000. Considering that item, the bond interest cancelled, and the advances previously mentioned, it is apparent that it has cost the northern lines approximately $218,000,000 to keep the S.P.&S. in operation since 1910.

The S.P.&S. is dependent, to some extent, upon the northern lines for car supply. These defendants own 2,063 box cars which are not sufficient to handle their total business. They order freight cars directly from the northern lines. Each of those lines assumes the responsibility for furnishing 50 percent of the extra cars required by the S.P.&S.

The record shows that from the beginning of the operation of the S.P.&S., in 1909, to the present time the management thereof has passed through three phases, the first of which extended to 1932. In that period the S.P.&S. had a separate president under which there was a complete organization at Portland, which functioned, at least from 1913, under direction of the northern lines. The instructions by the officials of the northern lines to the officials of the S.P.&S. covered everything from capital expenditures, the projects of expansion, to traffic and operating matters. There were occasions when instructions were sent to the officials of the S.P.&S. without any prior consultation directly with those officials.

The second management phase of the S.P.&S. extended from 1933 to 1940. In that period the positions of president and vice president of the S.P.&S. were alternated each year between the presidents of the northern lines. In one year the president of the Great Northern was president of the [fol. 350] S.P.&S., and the president of the Northern Pacific was vice president. In the succeeding year the latter became

the president of the S.P.&S., and the former became the vice president. During that period there was a superintendent in charge of S.P.&S. operations, but each department head of the S.P.&S. each year reported to, and received instructions from, the corresponding department of the northern line whose president was also the president of the S.P.&S. for that particular year. There was no official of the S.P.&S. in Portland in over all charge of S.P.&S. operations.

The third management phase of the S.P.&S. extends from 1940 to the present time. In that year the individual who had been superintendent at Portland in immediate charge of the S.P.&S. operating department was given the title of vice president, but the presidency and the vice presidency were still held by the northern line presidents who, as formerly, alternated each year in those positions. Now all questions which go to the northern lines from S.P.&S. departments are routed through the latter's vice president in Portland. He does not act on any matter of importance without the authority or approval of the two presidents of the northern lines.

The S.P.&S. defendants observe corporate formalities to the extent of a formal election of the boards and officers thereof, but that action is taken only in accordance with specific directions of the northern lines as to the personnel of the boards and officers. The boards of those defendants are composed of the two northern lines' presidents, the two northern lines' vice presidents in Seattle, and the S.P.&S. general counsel. The boards take no action other than to [fol. 351] elect officers or, upon the direction of the northern lines, to adopt a resolution to support corporate action such as the filing of an application with this Commission. The executive committee of the S.P.&S., established in 1940, consists of the two presidents of the northern lines with the two Seattle vice presidents designated as alternate members. It has never met formally except once a year to ratify the execution of S.P.&S. documents which in that year had been executed by the northern lines' executives in their capacities as officers of the S.P.&S.

Some matters relating to the S.P.&S. are handled by the executive departments of the northern lines. Such matters

are first brought to the attention of the two vice presidents in the executive departments and many are disposed of after discussions between them without submission to the presidents, and letters are sent out announcing the conclusions in the name of the president who in that year is president of the S.P.&S. The more important matters are referred to the two presidents for their disposition. Though in each year one northern line president is the president of the S.P.&S., and the other is vice president, there is no difference as to the extent of the authority exercised by each except in the title used in signing documents.

As to the control of traffic practices and policies of the S.P.&S. by the northern lines, the evidence shows that there [fol. 352] is no essential difference in the control exercised by the latter over such matters as distinguished from nontraffic matters. Although the freight traffic practices and policies of the S.P.&S. are directed and controlled jointly by the traffic departments of the northern lines, the local officials of the S.P.&S. are authorized to act within the framework of policies determined by the northern lines without specific approval from the traffic departments of the latter on each question which arises.

Matters relating to S.P.&S. rates fall into these general categories: Rates and practices relating to S.P.&S. local territory, rates and practices on traffic other than transcontinental traffic, and rates and practices relating to transcontinental traffic. As to the first category, the S.P.&S., with minor exceptions, is permitted, without specific approval in advance, to place such matters on the North Pacific Coast Freight Bureau docket to be handled in the regular course. Rates which fall in the second category are not placed by the S.P.&S. on that docket without approval in advance by the northern lines. If a proposal in that category is opposed by representatives of both northern lines, the S.P.&S. follows the lead of the representatives of those lines. There are instances, however, where the representatives of the northern lines are not in agreement on a proposal. In such cases the S.P.&S., in accordance with the practice approved by the northern lines, is permitted to exercise its best judgment in voting. In the third category, which relates to [fol. 353] transcontinental traffic, all matters pertaining

thereto are handled for the S.P.&S. by the representatives of the northern lines at the Transcontinental Freight Bureau meetings.

The S.P.&S. has no off-line representatives soliciting traffic. All off-line solicitation therefor is handled by representatives of the northern lines. All agents of the northern lines are direct agents of the S.P.&S. The latter has solicitors in its local territory who solicit traffic for movement over the northern lines, and they make no distinction between the two in their solicitation efforts. The choice as between the northern lines is left entirely to the shipper or consignee without any effort by the S.P.&S. to influence the choice. As each of the northern lines has competitive routes over its own rails as far as Portland to and from a major portion of the S.P.&S. territory and to and from California beyond the S.P.&S., it is apparent that the northern lines have, through their own traffic solicitors, the power of life and death over the S.P.&S.

In the light of the foregoing, the S.P.&S., and the northern lines urge that the traffic policy of the former is controlled by the latter. They refer to *Blackshear Mfg. Co.* v. *A. C. L. R.R. Co.*, 87 I.C.C. 654, decided in 1924, called the *Blackshear* case, which is a leading case relating to what constitutes common management or control for the purpose of determining whether joint-line or single-line rates should be applied. Therein two distance scales of rates were prescribed. One was a single-line scale for application over a single line of railway "or over two or more lines under the same general management and control", and the other a [fol. 354] joint-line scale which applied "only when the lines embraced in the route are not under common ownership or control." The Commission in explaining its phraseology so used stated at page 664:

> It should be understood that where the term 'carriers under the same management and control' is used in this report, it refers to carriers generally controlled through ownership, lease, or otherwise to the extent of controlling traffic policy, even though separate corporate entity may be maintained.

See also *Humbard Construction Co.* v. *Southern Ry. Co.*, 161 I.C.C. 38, wherein the Commission adhered to the principle stated above.

In seven separate proceedings, three of which were prior to the *Blackshear case* and four thereafter, the Commission commented that the S.P.&S. must be regarded, for rate-making purposes, as a part of the Great Northern and Northern Pacific systems rather than as an independent line. The first of these proceedings was *Portland Chamber of Commerce* v. *O.R.R.&N. Co.*, 19 I.C.C. 265, decided in 1910, the following appears at page 283:

> * * * It (the S.P.&S.) was built by the Great Northern and Northern Pacific jointly for the purpose of relieving congestion, avoiding double tracking over the Cascade Mountains, and furnishing a road of low grades from Western Washington to Tidewater on the Pacific Coast. * * * So far as these proceedings are concerned, we believe the road must properly be considered a part of the northern Pacific and Great Northern systems rather than as an independent line. It is used by the Great Northern and Northern Pacific in the transportation of all business between coast and interior points which can be handled more cheaply over it than over the existing lines of the Great Northern or Northern Pacific.

[fol. 355] In every case wherein the question has arisen since 1910 and as late as 1952, in *Helix Milling Co., Inc.* v. *Great Northern Ry. Co.*, 287 I.C.C. 77, the Commission has adhered to its first pronouncement as stated above, namely, that the S.P.&S. for rate-making purposes must be treated as a part of the systems of the northern lines rather than as an independent line.

The definition in the *Blackshear case* as to what constitutes "common management or control" in determining whether single or joint line rate scales shall be prescribed has also been applied by the Commission in interpreting this phrase as contained in section 15(4) of the act in proceedings involving the question of short-hauling. In *Seaboard Air Line Ry. Recs.* v. *Carolina & N. W. Ry. Co.*, 204 I.C.C. 416, which involved alleged violations of sections 1(4), 3(3), and 15(3) of the act. Therein, at page 420, the Commission said in part as follows:

> * * *. All of the outstanding bonds of the Carolina and Northwestern are owned by the Southern. * * *. The Southern has the equitable title to and control of all of the preferred stock and about 99 percent of the common stock of the Carolina & Northwestern. The president of the Southern is also president of the Carolina & Northwestern. * * *. The officials of the Carolina & Northwestern determine the policy to be adopted with regard to traffic matters local to that carrier, but in matters of common interest between the Southern and the Carolina & Northwestern, the policy determined by the Southern prevails. It is apparent, therefore, that both carriers are operated under a common management and control. * * *.

In its determination of whether particular lines are under common management or control so as to be denied the benefit of higher rates or arbitraries, the Commission has [fol. 356] frequently considered situations where a carrier has been dominated by two carriers, as in the instant proceeding, instead of one. In *Des Moines Union Ry. Switching*, 231 I.C.C. 631, the Commission held that the Des Moines Union Railway was a terminal agency of its proprietary companies, the Milwaukee and the Wabash Railroad Company, and stated in part, at page 637 as follows:

> * * * it was the purpose of the proprietary companies from the beginning to construct and operate but one facility, instead of each building and maintaining its own facilities, and to use those facilities in common so that each might have the benefit of them as fully as though it were the sole owner.

The complainant refers to a number of tariffs containing miscellaneous local distance scales of rates applicable from and to territory served by the S.P.&S. defendants, and shows that in the application of none of those scales is the S.P.&S., and the Great Northern or the S.P.&S., and the Northern Pacific combined, and the rate for their combined hauls arrived at on a through distance basis, but on the

contrary, in each case, a combination of local rates of each carrier is the legally applicable charge. The mere voluntary publication of isolated distance scales of rates in this manner does not prove that the S.P.&S., and Great Northern or the S.P.&S., and Northern Pacific should not be treated as single lines for rate-making purposes. The proceedings abovementioned show that they have been treated as such by the Commission. Furthermore, in *Cavon & Campbell* v. *Director General*, 57 I.C.C. 474, the action of the Missouri [fol. 357] Pacific Railroad Company in publishing and applying combination rates over different portions of its own system was not condemned.

The same tariffs which provide for the application of the combination rates between the S.P.&S., and each of the northern lines also provide for the application of similar combinations for movements between different segments of the S.P.&S. system itself; that is, between points on the Oregon Electric and points on the S.P.&S., and between points on the Oregon Trunk and points on the S. P.&S. There is no contention that the S. P.&S. system defendants are not under common management or control.

As to the important moving commodities herein, such as lumber and fruits and vegetables eastbound, and grain and manufactured articles westbound, there are no combination rates between the S.P.&S., and either of the northern lines. It is true, as pointed out by the complainant, that in dividing the revenues under the joint rates on such commodities the S.P.&S. receives divisions separate from the divisions received by the northern lines. The record shows that the Oregon Electric and the Oregon Trunk also receive divisions separate from the S.P.&S.

The fact that the S.P.&S. has always had a separate vote and separate status from the northern lines upon committees of the North Pacific Coast Freight Bureau is stressed by the complainant as indicating that S.P.&S. defendants and the northern lines are not operated under common management or control. It is provided in the Articles of Organization and Procedure of the Bureau, which [fol. 358] are incorporated in the Western Traffic Agreement, approved by the Commission under section 5(a) of the act December 15, 1949, that where two or more carriers

are under common management or control such carriers shall be considered as one member and have one vote. The record shows that from its organization, in 1920, until the adoption of the Western Traffic Agreement, the by-laws of the organization contained no provision relating to the voting powers of carriers under common management or control. On the assumption that the S.P.&S. has not had the right to vote since the adoption of the Agreement in question, action has been taken by the northern lines to secure an amendment to the rule involved so as to permit the S.P.&S. to vote. In the light of the evidence of record pertaining to the question of common management or control, heretofore discussed, this matter is not determinative of the issue raised in connection therewith.

The complainant further contends that the S.P.&S. cannot be regarded as under common management or control with the Great Northern, in considering traffic as to which the Great Northern has the long haul in conjunction with the S.P.&S., and at the same time under common management or control with the Northern Pacific, in considering traffic as to which that carrier has the long haul in conjunction with the S.P.&S. It is conceded by the complainant that the northern lines, through the executive committee of the S.P.&S., can exercise control of the latter, but it contends that as the northern lines themselves are not under common management they cannot qualify for exemption from short hauling under the provisions of section 15(4) of the act. [fol. 359] In *Ala., Tenn. & Nor. R. Corp.* v. *Southern Ry. Co.*, 148 I.C.C. 708, 711, the Commission quoted with approval the *Blackshear* definition in holding that the Southern Railway Company, the Alabama Great Southern Railroad, and the Cincinnati, New Orleans & Texas Pacific Railway were "under a common management and control" within the meaning of section 15(4) of the act and that the two carriers last named could not be required to establish a route with the complainant therein which would short-haul the Southern. In *Port of New York Authority* v. *A.T.&S.F. Ry. Co.*, 144 I.C.C. 514, 519, it was stated respecting section 15(4) that the act requires only a common management *or* control.

Among the many cases wherein the Commission has commented respecting the status of the S.P.&S. is *Inland Empire Shippers League* v. *Director General*, 59 I.C.C. 321. Therein, at page 341, it was stated: " " " the Spokane, Portland & Seattle is controlled jointly by the Great Northern and the Northern Pacific, and the vice-president of the Northern Pacific testified that it is used by these companies 'as they would use their own line'."

As to the question of whether or not a railroad can be considered the instrumentality of its two competitive owners (railroads) so that the former is under common control with each, see *Louisville & N. R. Co.* v. *United States*, 242 U. S. 60. Therein, the Supreme Court had under consideration the question of whether the Louisville & Nashville Railroad Company and The Nashville, Chattanooga & St. Louis Railway through their joint ownership of the Nashville Ter-[fol. 360] minals were discriminating against the Tennessee Central Railway Company by requiring their joint agency to perform switching for each of them while refusing to permit it to switch for other lines. The Court said, beginning at page 72:

> If the intent of the parties or the purpose of the arrangement was material in a case like this, obviously there was none to discriminate against the Tennessee Central Road. That road did not enter Nashville when the plan was formed, and the two appellants had a common interest, although competitors,—an interest that was also public and in which the city of Nashville shared. " " " if either carrier owned and used this terminal above, it could not be found to discriminate against the Tennessee Central by merely refusing to switch for it, that is, to move a car to or from a final or starting point from or to a point of interchange. We conceive that what is true of one owner would be equally true of two joint owners.

The record in the instant case points to a like conclusion, that is, that the common interest in the S.P.&S. of the Great Northern and Northern Pacific, although competitors, is such that they jointly manage and control the

S. P. & S. One fact stands out in this proceeding, namely, that it has always been the policy of the northern lines to preserve to themselves the long hauls on traffic originating or terminating on the S. P. & S. There is nothing of record to indicate that they have ever disagreed as to this. What considerations have led the northern lines into that policy determination are immaterial so long as the S.P.&S. has no choice except to follow directions. See *Seaboard Air-Line Ry. Recs.* v. *Northwestern Ry. Co.*, *supra*.

The Commission should find that the relationship of the northern lines with the S.P.&S. comes within the purview of [fol. 361] section 15(4) of the act, and that any order requiring the establishment of routes in connection with the Milwaukee and the S.P.&S., via Spokane, and joint rates thereover, must be grounded upon findings, as specified in section 15, that the routes sought are necessary or desirable in the public interest, and are needed in order to provide adequate, and more efficient or more economic transportation.

Therefore, the paramount issue in this proceeding is whether the Spokane gateway should be made available to shippers for routing, at joint rates and charges equal to those over competitive routes, of all traffic moving between points on the lines of the S.P. & S., on the one hand, and points generally east of Spokane, on the other, in connection with the Milwaukee. That issue falls within the limitations of section 15(3) and (4).

Evidence In Behalf Of The Complainant.—Complete track connections and interchange facilities between the complainant and the S.P. & S. have long been installed and in actual use at Spokane, and joint through rates and agreed divisions of such rates between these carriers have long been in effect via that gateway. Freight traffic moving thereunder has been interchanged there for a number of years between the said carriers but, as heretofore shown, only to a limited extent. All such traffic must either originate or terminate on the lines of the complainant, and no joint through rates apply via Spokane on traffic to or from the complainant's connections, with the single exception of export and import rates referred to in Appendix B. Mainly

[fol. 362] combination rates apply which, as shown, are on a substantially higher level than the unrestricted joint through rates applicable via Spokane on all freight traffic there interchanged between the S.P. & S., and the northern lines.

Because of the above situation, the complainant is restricted in its participation in freight traffic, either originating at or destined to points on the S.P. & S., except as described above, to the handling of such traffic between junctions of the complainant with the northern lines and their connections at points on and east of the Missouri River, and also at some points in Montana and points east and south thereof, called eastern gateways, the principal one, of which is the Twin Cities gateway.

The Milwaukee does not seek establishment of joint rates from or to Spokane proper in connection with the S.P. & S., as an origin or destination line, as shipments to or from industries thereon are handled in switching service with the northern lines.

At the time of the complainant's extension to the Pacific Coast, 1909, and until recent years, the State of Washington was the center of lumber production in the Pacific Northwest. With large timber resources adjacent to its line, the complainant was able to handle all the timber con- [fol. 363] sumed in its areas and to provide through routes for it, not only to local points on its line but also to points on its eastern connections. With the depletion of timber in Washington, the principal source thereof shifted to Oregon. There has been no changes in routes and rates, generally available to shippers of lumber and forest products from the Northwest to consuming areas in the Midwest and beyond, to correspond with the shift in the availability of those commodities. The absence of joint through rates thereon from S.P.&S. points in Oregon to points on complainant's connections restricts shipments into the territory of complainant, because of lack of diversion features. Frequently lumber shipments are diverted in transit. A shipment destined to a point on the complainant's line, if diverted to a point on another line, would be assessed higher charges than those that would apply if the joint through rates sought were in effect.

The complainant shows that it has been at a further disadvantage, respecting traffic to or from noncompetitive points on its lines west of the Missouri River for the reason that shippers, in order to obtain the lowest combination of local rates, must route their traffic via the nearest junction of either of the northern lines, thereby depriving the complainant of a substantial line haul.

As to westbound traffic, which originates on the Milwaukee and its connections east of the Twin Cities and destined to points on the S.P.&S., the Milwaukee, because of the existing rate situation, must give that traffic to the Great Northern or Northern Pacific at the Twin Cities. These carriers obtain a haul thereon of almost 1,500 miles before delivering it to the S.P.&S. at Spokane. The Milwaukee [fol. 364] wants to be in a position to solicit this traffic for the haul over its line from the Twin Cities to Spokane, as well as eastbound traffic from Spokane.

As previously mentioned, the Milwaukee, during 1952, handled 6,384 carloads of freight which either originated or terminated on the lines of the S.P.&S., and only 513 of those cars were interchanged at Spokane between the Milwaukee and the S.P.&S. The Milwaukee received $850,416.46 in revenue for its participation in the handling of this traffic. If all these cars had been interchanged at Spokane between the S.P.&S., and the Milwaukee, it is estimated that the latter would have received total revenue therefrom of $3,382,755.21, or an increase of $2,532,338.75. These estimates are shown, the complainant asserts, to show that there is a substantial amount of revenue from traffic that it does not have the opportunity of soliciting because of the existing joint rate situation at Spokane. The complainant emphasizes that it does not seek exclusive joint through rates restricted to its line between eastern gateways and points east thereof on any traffic originating or terminating on the S.P.&S. and interchanged at Spokane. The record shows that traffic which now originates on the Milwaukee at points west of the Twin Cities destined to points east thereof is interchanged in substantial quantities with W.T.L. lines at that transfer point even in instances where the Milwaukee could possibly carry the traffic through to destination.

There are at present joint through rates on various commodities and classes of traffic between points on the Milwaukee and connections and the Union Pacific and its connections in Oregon and Washington, and also between points on the former and connections and points on the Southern [fol. 365] Pacific in Oregon, including Eugene and Salem, which are also reached by the Oregon Electric, but the rates on lumber eastbound do not apply to points on connecting lines south of a line extending from Chicago to Omaha, Nebr., and the rates on other traffic both eastbound and westbound are restricted with the exception of transcontinental export and import rates. The Union Pacific does not permit milling or other transit privileges on lumber and related articles at points on its line in connection with movements via Marengo, Wash., and the Milwaukee. The lumber rates via western junctions from Union Pacific and Southern Pacific origins to points in official territory are restricted to across-lake routes north of Chicago, and are, for that reason, of limited practical application. With minor exceptions, the Milwaukee is without eastbound rates via western junctions from Portland and other points on the Union Pacific or its connections to destinations generally in Nebraska, southern Iowa, southern Illinois and south thereof and also to southern territory. A very insignificant amount of traffic is interchanged at Marengo for movement to official territory via across-lake routes.

There are no physical difficulties in connection with the interchange of traffic moving in either direction between the Milwaukee and the S.P.&S. at Spokane. Cars there going from the S.P.&S. to the Milwaukee move with Northern Pacific cars to the Milwaukee at the Northern Pacific interchange yard, about 1.2 miles. Those moving from the Milwaukee to the S.P.&S. are delivered by the Milwaukee at the Northern Pacific yard during the period when the Northern Pacific is handling cars for the account of the S.P.&S. Any cars received by the Milwaukee from the S.P.&S. are taken to the former's yard in Spokane and placed in trains for eastbound movement.

[fol. 366] The distances between Spokane and the Twin Cities over the Milwaukee, the Great Northern and the Northern Pacific are comparable, being 1,469, 1,454, and

1,496 miles, respectively. All three are standard transcontinental railroads with similar access through their connections to all parts of the United States.

Typical examples of the present rates, in carloads, over Milwaukee and S. P. & S. routes as compared with those over S. P. & S. and one northern line, or both, together with distances are: On lumber from Sweet Home, Oreg., to Aberdeen, S. Dak., the rates are 98 cents and 86 cents, respectively, over the Milwaukee and the northern lines, and the distances are 1,668 and 1,769 miles, respectively, over the Milwaukee and Northern Pacific routes; on lumber from Eugene, Oreg., to Chicago the rates are $1.245 and $111.5, respectively, over routes in connection with the Milwaukee and the northern lines, and the distances are 2,302 and 2,271 miles, respectively, over the Milwaukee and the Great Northern; on lumber from Portland to Pittsburgh, Pa., the rates are $1.555 and $1.29, respectively, over routes including the Milwaukee and the northern lines, and the distances are 2,708 and 2,734 miles, respectively, over the Milwaukee and the Northern Pacific; on frozen strawberries from Portland to Pittsburgh, the rates are $2.78 and $1.75, respectively, over routes including the Milwaukee and the northern lines; on pears from Bingen-White Salmon, Wash., to Milwaukee, Wis., the rates are $2.67 and $1.84, respectively, over routes including the Milwaukee and the northern lines, and the distances are 2,092 and 2,062 miles, respectively, over routes including the Milwaukee and the Great Northern; on agricultural implements from Rock Island, Ill., to Portland, the rates are $3.17 and $2.47, respectively, over routes including the Milwaukee and the northern lines, and the distances are 2,179 and 2,155 miles, respectively, over routes including the Milwaukee and the Great Northern, and on structural iron and steel from Chicago to Portland the rates are [fol. 367] $1.89 and $1.48, respectively, over routes including the Milwaukee and the northern lines, and the distances are 2,252 and 2,278 miles, respectively, over routes including the Milwaukee and the Northern Pacific.

The Milwaukee operates two regularly-scheduled freight trains between Tacoma, Wash., and Chicago, one eastbound and the other westbound, and there is regularly-scheduled

connecting service between Plummer Junction, Idaho, on the main line of the Milwaukee, southeast of Spokane, and Spokane for both trains. Additional main line service is provided, as required, to meet traffic requirements. As of June 4, 1954, the Milwaukee owned 55,033 freight cars. The S.P.&S., the Great Northern, and the Northern Pacific owned 3,444, 38,738, and 37,086 freight cars, respectively, on that date. It is the practice of the Milwaukee to furnish connecting lines with cars for loading where there is a reasonable expectation that the Milwaukee will receive a long haul of the traffic. The Milwaukee usually has sufficient cars on hand not only to supply its own needs and the specific requests from connecting lines, but also to report excesses to the Association of American Railroads, called the A.A.R.

The maximum grade, eastbound, on the line of the Milwaukee between Spokane and the Twin Cities is 1.7 percent, as compared with the maximum grades between those points on the lines of the Great Northern and the Northern Pacific of 1.8 percent and 1.9 percent, respectively. The maximum grades westbound for the Milwaukee, Great Northern, and Northern Pacific are 2.0, 1.0, and 2.2 percents, respectively. These three carriers can handle loads of substantially the same size.

Between Avery, Idaho, and Harlowton, Mont., 440 miles, the line of the Milwaukee is electrified, and between Othello, Wash., and Seattle and Tacoma, approximately 225 miles, the line has been electrified since 1918. The Milwaukee acquired 12 additional electric locomotive units in 1950 and [fol. 368] retired some units, so that the total units changed from 102 in 1950 to 105 in 1953. As of September 30, 1954, the Milwaukee's locomotive power was 60,741,353 pounds of starting tractive effort, which is a standard unit of comparison, as compared with 60,494,467 pounds as of September 30, 1943. The percentage of gross ton miles operated on the Milwaukee lines, as a whole, by steam, diesel, and electric locomotives in 1943 was 86.7 percent steam, 6.5 percent diesel, and 6.8 percent electric. In 1954, the percentages were 7.7, 84.7, and 7.6, respectively. Upon completion of the delivery of 74 additional diesel locomotives on order, the Milwaukee will be completely

dieselized on the portion of its line not covered by electric operation. Among its recent improvements or expansion, the Milwaukee, in 1953, completed a 70-track hump classification yard with automatic switching and push-button speed control at Bensenville, Ill. In 1952, the same thing was done at its yard in Milwaukee, Wis., and in 1947, an extension of its St. Paul Yard was completed. The cost of the foregoing was approximately $9,000,000.

From South Minneapolis, Minn., to Mobridge, the distance via the Milwaukee is 382 miles, on 147 miles of which centralized traffic control is in operation. This type of control, which speeds up operation, is also in use on a portion of Milwaukee's trackage in the Twin Cities area.

From the Twin Cities to the Pacific Coast, the Milwaukee, in 1953, handled 11,439,631,000 freight gross ton miles of all classes of traffic. In 1943, the amount was 14,559,747,000, or 127.27 percent of the 1953 tonnage. The total Milwaukee freight gross ton miles for 1953 was 36,730,763,000 as compared with 41,770,570,000, in 1943. The record indicates that the Milwaukee has adequate facilities for handling a greater amount of traffic than it now enjoys.

Transit.—The Milwaukee emphasizes the fact that it offers a large number of transit privileges at points on its line. These include stops for partial loading or unloading, storage, grading, packing, sorting, consolidating, concentration, milling, fabrication, assembling, and distributing of many commodities, and in the case of livestock, grazing, [fol. 369] feeding, trying-the-market, among others. Such privileges, considered valuable by certain shippers in marketing operations and permitting freer flow of traffic through the transit points, are available only when joint rates via the transit point are maintained. These privileges would become applicable automatically under the single-factor through rates sought in this proceeding. Below are shown instances where they could be used advantageously by shippers.

In the case of shipments of sheep originating at Washtucna, Wash., or some other local point on the S.P.&S., stopping in transit for summer grazing in the areas along the lines of the Milwaukee in Northern Idaho would be

permitted under the transit arrangement. Later the sheep could be marketed in the Midwest or East and the through rate from point of origin would apply. Shipments of lumber originating at points on the S.P.&S. might be stopped at St. Maries, Idaho, a local point on the Milwaukee, 63 miles east of Spokane, for the completion of loading or for further finishing, and shipped to markets at through rates. A feed mill operator at Spokane, with customers on branches on the S.P.&S., would be able to couple up credits representing movements of wheat or its products from Milwaukee points in Montana with soybean meal from Minnesota, corn from Iowa, for example, and secure protection of the balance of the through rates on the entire mixture, whereas, under the present restricted application of rates such a shipper must entirely forego use of Milwaukee originated tonnage or be subjected to the local rate from Spokane to S.P.&S. destinations, which would result in transportation charges substantially higher than on grain originating at common and cross-country points on the northern lines in Montana. For example, the ab- [fol. 370] sence of the joint through rates sought prevents the use of the milling-in-transit privilege at Harlowton, Mont., on wheat originating at Geraldine or numerous other Milwaukee stations in Montana when destined to Pasco and Goldendale, Wash., Astoria, Oreg., and numerous other local points on the S.P.&S.

It is a common practice to stop for partial unloading of shipments of manufactured articles from the East to Pacific Coast destinations at two or three intermediate points en route. There are many points in the intermediate territory, served exclusively by the Milwaukee, which are now precluded from that privilege because of the restricted application of rates via the Milwaukee to S.P.&S. points. Higher combination rates would apply if a shipment should be stopped at a Milwaukee point for the purpose mentioned.

There are many points in Montana which are common to the Milwaukee and to only one or the other of the Northern lines. Great Falls is served by the Milwaukee and the Great Northern and is designated as an intermediate point for the purpose of stops in transit. Missoula which is served by the Milwaukee and Northern Pacific

is also an intermediate point. Under Milwaukee tariffs, a shipment moving beyond Missoula may be stopped in transit at both Great Falls and Missoula. The same situation applies with respect to Lewiston, served by the Milwaukee and the Great Northern, and Bozeman, served by the Milwaukee and the Northern Pacific. The Milwaukee is in a position to combine shipments, Lewiston with Bozeman or Great Falls with Bozeman or Missoula, under the rates sought, and protect the through rates on transcontinental movements. Neither the Great Northern or the Northern Pacific could do this.

[fol. 371] On westbound transcontinental shipments, it is sometimes necessary for shippers to change the destination point en route. For instance, on a shipment initially consigned to Seattle, with stops at intermediate points on the Milwaukee, the competitive rate to that destination would be protected, but, should it become necessary also to stop at an S.P.&S. point, or to change the destination to an S.P.&S. point, the shipment would be subjected to a higher combination rate. For that reason, shippers tend to avoid the use of the Milwaukee on shipments to Seattle. An example of the above was the heavy movement of United States Government freight to the Seattle Port of Embarkation for the Pacific Theater in World War II, and, more recently, for Korea, much of which could not be cleared in the normal course, necessitating diversion into the Government's holding and reconsignment depot at Pasco from which it was later moved to North Pacific Coast ports for shipment overseas. Although the Milwaukee does participate in transcontinental export rates, and single-factor rates not applicable on direct movements to Portland or Astoria, Oregon, if the shipment is stopped for storage at Pasco, the shipper has to pay on the movement into Pasco, the combination of domestic rate factors on Spokane, which are considerably higher than either the single-factor domestic rate applicable via other lines to Pasco, or the export rate applicable on shipments moved directly through Pasco to Portland or Astoria via the Milwaukee, Spokane, and the S.P.&S. This situation renders use of the latter route inoperative, particularly on Government traffic.

Among westbound transit privileges at stations served by the Milwaukee between Mobridge, S. Dak., and the Twin [fol. 372] Cities, which would be available if the Spokane gateway were open on equality of rates in connection with the Milwaukee to S.P.&S. territory, is stopping to complete loading of dairy products, and the transiting of canned goods at Glencoe, Minn., a local station on the Milwaukee. Similar conditions obtain on eastbound shipments, such as lumber, fresh fruits and vegetables, and seeds. Transit privileges are especially valuable at small stations where full carloads cannot be handled economically. As to lumber, while there are through rates on lumber and lumber products via Spokane to various local points on the Milwaukee, a shipper, who diverts a shipment to a destination beyond the local point must pay freight charges at the higher combination rates. This situation largely nullified the practicality of such through rates, and acts as a deterrent to the establishment of plants for the milling or manufacturing of lumber at points on the Milwaukee. Between Spokane and Mobridge the Milwaukee serves 315 local points.

The Secretary of Agriculture takes the position that the exclusion of the Milwaukee from full participation in the traffic moving to and from the S.P.&S. territory makes impossible the desired flexible and expeditious distribution of agricultural commodities and farm supplies by producers and shippers. The evidence shows that large quantities of agricultural commodities are produced in and distributed from, to and within, the areas involved in this proceeding; that Oregon and Washington are surplus producing areas for many of such commodities; that Spokane is an important gateway for their distribution, and that [fol. 373] any reduction in total transportation costs resulting from the establishment of the competitive joint rates on the products of agriculture here sought would be reflected in increased profits to producers.

From 1940 to 1950, the population of Washington increased 37 percent and that of Oregon by 39.6 percent. The number of cattle, calves, sheep and lambs on farms in those States increased from 2,278,000 head in 1950 to 3,490,000 head in 1954. The sales of such important commodities as

wheat, corn and oats in 7 of the States in the considered area, namely, Iowa, Minnesota, Montana, Oregon, South Dakota, Washington, and Wisconsin, increased from 411,908,000 bushels in 1939 to 700,517,000 bushels in 1952. In Oregon and Washington apples, pears and potatoes produced for marketing increased from 44,487,000 bushels in 1939 to 54,325,000 bushels in 1952. During the same period vegetables and non-citrus fruits produced for commercial processing increased from 380,606 tons to 563,743 tons. In those two States poultry sold increased from 66,640,000 pounds in 1939 to 146,823,000 pounds in 1952. During the same period the production of cheese in the 7 States above mentioned increased from 419,869,000 pounds to 654,694,000 pounds. The production of lumber in Oregon and Washington increased from 9,008,803,000 board feet in 1939 to 12,527,000,000 board feet in 1952. The exports of agricultural products through the ports of Astoria, [fol. 374] Portland, and Vancouver increased from 864,356 tons in 1939 to 1,851,487 tons in 1952.

In 1953 alone 12,909 carloads of Oregon and Washington potatoes were shipped to 100 markets located throughout the United States, including numerous markets served by the Milwaukee. During the same year a total of 3,551 carloads of fruits and vegetables originated at points served by the S.P. & S. During that period the S.P. & S. interchanged 5,015 carloads of products of agriculture at Spokane with the northern lines.

Both the main line and the Elk River Branch line of the Milwaukee traverses the St. Joe National Forest in Idaho, and the Forest Service has made 43 allotments for the grazing of cattle and sheep there, which comprise an area of 826,160 acres having a carrying capacity of 24,900 sheep and 3,758 head of cattle. That the grazing areas are not being used to capacity is shown by the fact that in 1954 the aforementioned area had only about 8,000 head of sheep. Extensive logging operations in Idaho, in both the National Forest and other areas, add to the grazing areas as the timber is removed. Greater utilization of these areas for summer grazing, the evidence indicates, would increase the volume of movement of livestock on the

Milwaukee to eastern feed lost, mainly in Iowa, Minnesota, and Illinois.

[fol. 375] On its line between Spokane and the Twin Cities, the Milwaukee has major livestock feeding and watering facilities at Avery, Idaho, Deer Lodge, Harleton, and Miles City, Mont., Aberdeen, S. Dak., and Montevideo, Minn. As of October 1954, the Milwaukee owned 2,581 single deck and 738 double deck stock cars.

The record shows that the lumber industry is one of the most important industries in the Pacific Northwest. Large volumes of traffic are involved in connection with this industry. The Western Forest Industries Association, whose members include loggers, sawmill operators, piling producers, remanufacturers, and wholesale distributors of lumber in several of the western States, a number of which have plants on the lines of the S.P.&S. in western Oregon, introduced evidence in support of the complainant. This evidence, in substance, is to the effect as shown below.

The marketing of western lumber and timber products requires flexible, liberal, and unrestricted routing, together with liberal transit privileges. Economical transportation costs, resulting from competitive through rates, are necessary for these reasons: Production of these products in the Pacific Northwest greatly exceeds local needs and, therefore, the bulk of it is marketed principally in the Midwest and East in competition with lumber produced in the South and elsewhere; the center of western lumber production is constantly shifting; the market is unpredictable with demand and prices fluctuating from day to day, [fol. 376] thus necessitating the diversion of cars from a weakening market to one of greater strength; and in recent years, retail lumber yards, the best customers of western lumber producers, have been replenishing their stocks at frequent intervals. To meet this demand and also to avoid cancellation of firm[6] orders by purchasers, when mills are sometimes prevented from making shipments when specified because of car shortage, there has developed the custom

[6] A "firm" order shipment is one for which a sale has been made to the ultimate receiver before the car is billed out of the origin point. A "transit" shipment is one which is not sold prior to the billing from the point of origin.

of loading and shipping so-called transit cars, which are billed to a convenient junction point in the Midwest or East. The seller, usually a wholesaler, when a buyer is found, diverts the transit car to the buyer's station.

The transit method of merchandising necessitates flexible routing and shippers are reluctant to ship a transit car over a route which does not have competitive through rates. The members of the aforementioned association are not large enough to have their own sales organizations and must rely mainly upon wholesalers, such as those who engage in transit shipping to sell their output. Presently many wholesalers make no effort to sell lumber produced at mills on the S.P.&S. in the territory west of the Twin Cities because, if they use existing routes through the Twin Cities, they must pay extra freight charges, and, if [fol. 377] they ship via Spokane in connection with the Milwaukee, they cannot move the cars out of the Milwaukee local territory points without paying higher rates. Such points are called closed or pocket markets.

Persons actively engaged in the business of manufacturing or marketing lumber produced in the Pacific Northwest and others, located in the Midwest, who purchase such lumber, offered evidence which confirms, in the main, the evidence discussed above. Among these are four lumber wholesalers at Eugene, Oreg. Their shipments eastward aggregate approximately 16,000 carloads annually, the major portion of which are sold in transit. During 1953, one of these wholesalers shipped about 2,000 cars which were billed for partial unloading. These shippers purchase lumber in Oregon and Washington on the lines of the Oregon Electric and the S.P.&S. at points both common and local. Only a few lumber mills are located on both the Oregon Electric and the Southern Pacific. They assert that unrestricted routing, with transit privileges including free diversion rights, over routes via Spokane in connection with the Milwaukee, would be helpful to them in the purchasing and marketing of lumber. One of them lost two sales on the day its manager testified at the hearing herein because of the restrictions in the rates over the Milwaukee. Another lumber wholesaler stated that a shipment originating on the S.P.&S. is less desirable than one

originating on a line without rate restrictions. The testimony of other lumber wholesalers, located at Portland, Seattle, and Tacoma, who purchase lumber at points on the S.P.&S., and ship a large number of transit cars eastward, is to the same effect respecting rate and transit restrictions, as is the testimony of certain purchasers of lumber at points in the Midwest.

A manufacturer and wholesaler of lumber located at St. Maries ships an average of 1,000 cars of lumber per year [fol. 378] from or through St. Maries. This company, at that point, remanufactures and finishes lumber in transit and also completes loading of lumber in transit. Because of the rate and transit restrictions, this company finds it difficult to handle lumber which originates in Oregon on the S.P.&S., or on the Oregon Trunk, regardless of whether it is routed over the S.P.&S., or the Union Pacific.

A discussion of the evidence offered, in the main, by shipment and receivers of other commodities in support of the complainant follows:

Grain.—A wholesale grain dealer at Seattle buys corn from dealers in Minneapolis, Sioux City, Iowa, and Omaha, as well as at country points in the Midwest. This corn is sold in the Pacific Northwest. When a car is moved out from origin point, it is not known where it will be finally delivered. It is billed to either Spokane or Seattle diversion points with delivery carrier specified. There are no joint through westbound rates on corn from Milwaukee origins to S.P.&S. destinations. If the right transit is not available on a particular car, the buyer will either refuse to buy it or will insist on a substantial discount. It is, therefore, important to this company to have widespread routes, Spokane and west, which will permit unrestricted use of transit privileges by buyers. It is necessary to route some shipments of corn into Spokane via the Milwaukee but, under present conditions, it must be held to a minimum because it cannot be freely diverted to the various markets. This situation results in frequent shortages for Milwaukee points west of Spokane. The proposed routes and rates would permit this company to decide upon the disposition of the corn after it reaches Spokane rather than before.

[fol. 379] Wheat growers in Milwaukee territory in Montana want the opportunity to ship their wheat over the Milwaukee to points on the S.P.&S., particularly, Astoria, Oreg., at charges comparable with those paid by shippers in Northern Pacific territory, and operators of grain elevators at Geraldine and White Sulphur Springs, Mont., with capacities of 65,000 and 20,000 bushels, respectively, state that they must sell their wheat marketed in Oregon and Washington two cents per bushel less than their nearby competitors on the Northern Pacific. This is because of the rate situation described. The operator at Geraldine handles about 300,000 bushels of wheat, barley, and oats annually.

Evidence was offered by the Omaha Grain Exchange whose members do a general grain business in the terminal market of Omaha. Grain which originates on the Milwaukee and moves into the Omaha market for storage and subsequent movement, this evidence shows, is at a disadvantage for marketing in the Pacific Northwest because it is restricted tonnage in that it cannot be shipped to S.P.&S. points at through rates. With more flexible routing, as herein sought, these grain dealers would be in a better position to compete with other midwestern markets. Such restricted or penalty tonnage cannot have widespread disposition after it reaches an inspection point, such as Spokane, and is subject to a price discount if, because of freight charges, it cannot be forwarded to the territory desired by the Pacific Coast buyer.

Fresh Fruits and Vegetables.—Testimony as to the desirability of the through rates sought to the extent that they would apply on fruits and vegetables was submitted by a concern engaged in the distribution of these commodi- [fol. 380] ties at Mitchell, S. Dak., and Sioux City, Iowa, both located on the Milwaukee. This concern obtains fresh fruits and vegetables from all over the United States, handling from 600 to 800 cars per year, approximately 100 of which are shipped from the Pacific Northwest. An average of one car or more per week is rejected for various reasons. These cars must be resold and it is necessary, in order for the distributor to maintain good rela-

tions with suppliers and brokers, to have a wide territory to which rejected cars may be reshipped. The present rates from the Pacific Northwest over routes via Spokane in connection with either of the northern lines are not desirable, it is asserted, because of delays resulting from circuity. Routes in connection with the Milwaukee afford faster service and would be used if shipments moving thereover could be diverted without penalty in case of refusal.

Coal.—There is a coal mine at Roundup, Mont., a point on the Milwaukee, and coal is shipped from there to points in various states, including the State of Washington. Comparisons are made of the combination rates on coal applying from Roundup via Spokane to points on the S.P.&S. with the present joint through rates on coal from Red Lodge, Mont., on the Northern Pacific, where there is a competing operation. Although the distance to each point from Red Lodge is slightly longer than from Roundup, the combination rates from the latter are materially higher than the joint through rates from the former. The establishment of reasonable joint through rates from Roundup to points on the S.P.&S. would enable the operator there to enter this potential market on an even basis.

The operator of a wholesale fuel business at Portland whose distribution territory includes points on the S.P.&S., and the Oregon Electric in Washington and Oregon, is in- [fol. 381] terested in developing markets for coal from various locations but, because of the present rate situation, it is not possible to do so with coal produced at Roundup.

Furniture.—A company at Seattle distributes school furniture and equipment, theater equipment, church furniture and equipment, and similar items, most of which comes from a manufacturer at Menominee, Mich. It also obtains these items from Jasper, Ind., Chicago and Aurora, Ill., Liberty, N. C., and Waco, Tex. It sells to buyers at points in various States, including points in Montana and S. P. & S. points in Washington and Oregon. This distributor never knows in advance of actual receipt of orders just when or where deliveries are to be made. It has been

dealing in theater equipment extensively in Montana for many years, and sales of school and church furniture are now being developed there with expectation of a substantial increase in the volume of business. Furniture and equipment has been sold at such S. P. & S. points as Camas and Pasco, Wash., and Ranier, Eugene, Albany, Salem and numerous other points throughout the Willamette Valley in Oregon. The distributor deals extensively in part carloads and utilizes the privilege of stops for partial unloading. The bulk of the furniture shipped from Menominee starts in carload lots which are frequently combined shipments for various stops en route. It would be a convenience for it to combine shipments to local points in Montana on the Milwaukee with shipments to points on the S.P.&S., which it cannot do under the present rates. An additional advantage, incident to shipping via Milwaukee through Montana, is that there can be combined in [fol. 382] one car part carload shipments to Great Falls, a common point of the Milwaukee and the Great Northern, and to Missoula, a common point of the Milwaukee and the Northern Pacific. This cannot be done when the movement is over either of the northern lines.

Agricultural Implements.—A company at Racine, Wis., has been engaged in the manufacture and sale of agricultural implements, including tractors, for 112 years. It has a number of plants in the Midwest, some of which are served by the Milwaukee. To the Pacific Northwest, it ships from 200 to 250 cars per year, valued from $15,000 to $25,000 per carload. It has dealers located in S.P.&S. territory and frequently avails itself of the privilege of stopping for partial unloading or storage in transit in connection with its shipments to that territory. The partial unloading privilege is necessary in the distribution of these commodities as orders are placed for less-than-carload quantities. The proposed routes and rates would be of benefit to this company. Recently a carload shipment moved over the Milwaukee to Portland. It was stopped there for partial unloading and then diverted to Clatskanie on the S.P.&S. Because of the lack of through rates, it was necessary to pay the local rate beyond Portland,

rather than the balance of a through rate, which resulted in higher transportation cost. This company keeps a stock of its implements at warehouses at Spokane and Portland. If the through rates sought were in effect, it would be in a position to ship outbound from Spokane cars moving into that point over the Milwaukee as well as over the northern lines.

[fol. 383] *Iron And Steel Grain Bins.*—A manufacturer and shipper of iron and steel grain bins, among other things, is located at Sioux Falls, S. Dak., off the rails of the Milwaukee. This concern is the largest manufacturer in the United States of diversified sheet steel farm equipment. In 1953 it used 16,000,000 pounds of iron and steel and its estimated use thereof in 1954 was 24,000,000 pounds. Most of this company's inbound tonnage comes in on the Milwaukee and most of its outbound tonnage moves out thereover under fabrication in transit privileges, which are more liberal than those published by the northern lines. The Great Northern, which also serves Sioux Falls, publishes limited transit privileges at that point on westbound and transcontinental iron and steel traffic when moving over certain routes through Snowden, Mont., or Fort Buford, N. Dak. The tariff covering such tonnage from origin territory east of Chicago provides routes through Sioux Falls on the Great Northern only when the movement into Sioux Falls is by the Illinois Central Railroad Company, or the Burlington to Sioux City and the Great Northern to Sioux Falls. These routes are not ordinarily used by the manufacturer of the considered grain bins. In order to ship over the Great Northern to S.P. & S. points, it would be necessary for this company to determine in advance the number of carloads it might haul into transcontinental territory and then order a sufficient number of carloads of iron and steel routed into Sioux Falls over either of the aforementioned routes. If too many carloads were ordered, this company would lose valuable transit privileges on the unused balances. Thus, to all practical purposes, this company, because of the existing rate situation, cannot now ship to S.P. & S., points over any route and is thereby handicapped in the sale of its grain bins in

the northwest. One of its principal competitors is located at the Twin Cities and is able to ship over either of the northern lines to S.P. & S., points without routing restrictions on its inbound traffic.

[fol. 384] *Livestock.*—A livestock producer, engaged principally in sheep raising at Washtucna, Wash., the site of his winter range, testified in support of the complainant. His testimony is to the effect that sheep must be shifted from winter range to summer range in early May; that he summer grazes his sheep in the St. Maries area which is local to the Milwaukee; that at the completion of summer grazing, lambs are ready for market and that the recognized market is ultimately Chicago; that his sheep are transported by the S.P.&S. to the summer range for grazing in transit; that in the autumn, when they are ready for market, they are shipped by rail to Chicago; that there are no through rates from Washtucna to Chicago, with grazing in transit, and that the combination rates applicable thereon increase the freight charges by about $40 per car over what the charges would be at the joint through rates sought. The witness estimated that he would market about 10 carloads of lambs in 1954.

Evidence submitted on behalf of the Chicago Producers Commission Association indicates that the volume of sheep and lambs handled by this association annually totals from 1,300 to 1,800 carloads, which are received from many States, including Washington, Idaho, and Oregon, an important production area. This association is interested in greater production of sheep and lambs and the opening up, for that purpose, as many places as possible where feed is available. It has handled livestock produced in the Pacific Northwest for many years. Freight charges are deducted [fol. 385] from the proceeds when livestock is sold at a public market, and are assumed by the producer. A reduction in the rates on sheep over the Milwaukee, the evidence shows, would encourage the utilization of summer grazing ranges east of Spokane.

During 1953 more than one million head of livestock was shipped out of Sioux Falls, about 50 percent moving by rail. Many carloads of hogs move annually to the North

Pacific Coast. One hundred and eighty nine carloads moved to Seattle in 1953 over the Milwaukee, but none moved to Portland over that line. During that year 394 carloads of hogs moved to Portland over routes in connection with the northwestern and the northern lines. The evidence shows that there are certain inherent advantages in each route, but the Milwaukee route cannot be used because joint through rates do not apply thereover.

A representative of an organization composed of shippers and receivers of freight throughout the State of Montana testified that because of the absence of joint through rates in connection with the S.P. & S., and the Milwaukee, his clients do not have full benefit of the transportation facilities of the latter. It is their position that from a rate and service standpoint there should be no different treatment of shippers and receivers of freight located at local points in Montana on the Milwaukee from that accorded those located at points on the northern lines. The testimony of a representative of shippers and receivers of freight in Kansas City was to the effect that under present day sales and merchandising methods, retailers and wholesale distributors are inclined to keep their inventories as low as possible, [fol. 386] and that the present routing restrictions which eliminate stops on the Milwaukee in Montana where the balance of the carload is destined to points on the S.P. & S., or to points in the East where the traffic originates on the S. P. & S., tend to divert traffic to motor carriers, particularly the local portions of the car.

Certain of the foregoing shippers asserted that a shortage of freight cars exists at times on the S.P. & S. They are of the view that the establishment of the proposed routes would result in a much needed additional source of cars for those lines.

In the light of the foregoing evidence, the Milwaukee insists that a need has been shown for the rates and routes sought. From a service standpoint, it does not contend that routes embracing its lines would be more efficient than those which include the Northern lines. It does contend, however, that the evidence shows that the Milwaukee operation is entirely comparable with the operations of the Northern lines, and that the proposed joint rates and routes

would provide adequate and more economic transportation, in that the resulting greater freedom of movement would open up additional market areas and remove restrictions which presently hamper the movement of traffic.

Evidence in Behalf of The Defendants.—The S.P.&S. system defendants admit that they have refused to enter into a full line of joint rates with the Milwaukee at the Spokane gateway, but state that the Milwaukee's request for such rates has been declined at the direction of the northern lines. As heretofore shown, the northern lines jointly own those defendants and control their traffic policy.

[fol. 387] All stations on the Oregon Trunk, except Wishram, Wash., are also stations on the Union Pacific. Many stations on the Oregon Electric, including Portland, are also stations on the Southern Pacific. The principal stations on the S.P. & S. proper in the Portland area are also served by either the Union Pacific or Southern Pacific, or both, as well as by the northern lines. The Union Pacific and Northern Pacific serve Kennewick, Wash., on the line of the S.P. & S., 151 miles southwest of Spokane. The Union Pacific also serves a number of smaller stations in Washington reached by the S.P. & S., and its line on the south bank of the Columbia River parallels the line of the S.P. & S., on the north bank for many miles.

Routes on traffic moving via the S.P. & S., between points on its lines and points generally east of Spokane, are designated to preserve to the northern lines their long hauls. With minor exceptions, heretofore mentioned, joint through rates apply only via Spokane in connection with the northern lines east of Spokane; via Pasco, Wash., 148 miles southwest of Spokane, in connection with the Northern Pacific east of Pasco, and via junctions in the Portland area and a northern line beyond. From and to common points on the S. P. & S., and the Southern Pacific, there are routes via the latter through various gateways, including Ogden, Utah, El Paso, Tex., and Portland. From and to common points on the S.P. & S., and the Union Pacific, there are routes in connection with the latter via Council Bluffs, Iowa, Kansas City, Marengo, Wash., 62 miles west of Spokane over the Milwaukee, among other junctions.

[fol. 388] In 1953 the Northern Pacific handled 37,907,214,000 gross ton miles of all classes of traffic as compared with 42,342,309,000 in 1943. The starting tractive effort of its motive power increased from 45,244,000 pounds to 48,601,000 pounds in 1953. While the decrease in the gross ton miles of freight handled by the Great Northern from 1943 to 1953 has not been significant, there has been a decrease in the number of cars over that portion of its line over which S.P.&S. traffic moves. During the period mentioned its net investment in road and equipment showed a net increase of $180,625,510. The evidence shows that both northern lines have surplus capacity, are efficiently operated, and furnish good service to shippers over their lines. They provide numerous through freight trains each day between Spokane and the Twin Cities.

From and to many points in the areas involved, the existing routes of the S.P.&S., and one or the other of the northern lines are shorter than would be the routes sought by the Milwaukee. Using the shortest tariff routes, defendants show that from Pasco, Wash., to 24 typical destination points, including Chicago, St. Louis, Mo., Detroit, Mich., New York, N. Y., and Atlanta, Ga., the Milwaukee route would be the shortest to only five destinations, while a route using one of the northern lines would be the shortest to 18 destinations and equal to the Milwaukee distance to one destination. The extreme percentage of circuity to destinations where the Milwaukee mileage is the shortest is 10 percent to Des Moines, Iowa. The extreme percentage of [fol. 389] circuity to destinations where the route via one of the northern lines is shortest is 33 percent to Great Falls, Mont.

As to certain types of freight cars, such as 50-foot box cars and refrigerator cars, the combined ownership of the northern lines is much greater than that of the Milwaukee. Although conceding that car ownership is not necessarily determinative of ability to supply cars, the northern lines insist that they are in a better position to supply the S.P.&S., lines with cars than are other carriers. They take into consideration the requirements of those lines in placing orders with the car service division of the A.A.R., and in supplying those lines with cars the northern lines

treat them the same as they do operating divisions on their own systems. The northern lines furnished the S.P. & S., with 18,149 cars in 1953, and 21,034 cars in 1954.

The only car shortages on the S.P. & S., in 1953 were in the heavily insulated and mechanical type refrigerator cars, which occurred for brief periods in July and October, and in 50-foot box cars for a two-week period commencing the last of October. The only shortages in 1954 were in the same type of equipment. On June 23 there was a shortage of heavily insulated refrigerator cars. Beginning in November and extending until January 6, 1955, there was a shortage of 50-foot box cars. An unusually large number of orders were placed with the S.P.&S. for this type of car during that period. This was occasioned by the inability of steamship lines, because of labor difficulties, to handle paper normally transported by them. The evidence tends to show that when car shortages occur on any railroad serving the Pacific Northwest there are car shortages in varying degrees on all railroads serving that area.

[fol. 390] The S.P. & S., and the northern lines, object to the establishment of the joint through rates sought upon the principal ground that routes composed of the S.P. & S., and the Milwaukee would short haul the existing routes composed of the S.P. & S., and the northern lines. The latter point out that except for the fiscal year ending June 30, 1911, there was no year in which the net railway operating income of the S.P. & S., was as much as the accrued interest on its outstanding bonds, until 1941. This fact, they contend, demonstrates that the importance of the S.P. & S. project to them was not S.P. & S. revenues on local traffic but revenues on long-haul traffic. As heretofore mentioned, it has cost the northern lines approximately $218,000,000 to keep the S.P. & S. in operation since 1910.

The record shows that when the transcontinental railroads extended their lines to the North Pacific coast around the turn of the century there were already then in existence a number of short lines of railroad, many of which were independently operated, and, as a transcontinental line acquired or secured control of a short line the rates of the latter were immediately restricted to the routes of the transcontinental line which acquired it. This practice

has effectively confined the rates on traffic originating or terminating on each subsidiary to routes affording the parent line its maximum haul.

The Milwaukee is one of a number of intermediate carriers participating in routes from and to the above-mentioned Southern Pacific and Union Pacific points. On westbound traffic, the Milwaukee routes are unrestricted and apply via Marengo, thence Union Pacific, or Union Pacific to Portland and Southern Pacific beyond. On eastbound traffic, the Marengo routes on classes and commodities generally are restricted so as to apply only to destinations west of Chicago, north of the Milwaukee's Omaha-[fol. 391] Chicago line and only to destinations in official territory reached via car ferry routes across Lake Michigan. The eastbound rates on lumber via Marengo are less restricted. They apply via the carry ferry routes to official territory east of the Illinois-Indiana State line, to destinations west thereof on and north of the Omaha-Chicago line and to all Milwaukee stations west of Indiana. The Marengo gateway affords the Milwaukee its long haul but, as previously noted, the movement via that gateway in connection with the Milwaukee is comparatively light. The Milwaukee also participates in routes without restriction between the Union Pacific and Southern Pacific points referred to and points in the United States east and south of the Missouri River as to traffic it interchanges at Omaha, Kansas City, and other western trunkline gateways.

As hereinbefore indicated, there has been published or approved a full line of joint through rates on forest products from S.P.&S. points to most points on the Milwaukee east of Spokane, and a very limited number of joint through rates on other commodities between S.P.&S. points and Milwaukee local territory west of the Twin Cities. Whenever there is a bona fide application indicating a need therefor, the S.P.&S. is willing to establish additional joint through rates with the Milwaukee on other classes and commodities, to and from Milwaukee local territory.

Eastbound forest products moving to destinations beyond the Milwaukee and the northern lines, as to which one of the latter lines serve as an intermediate carrier, constitute the principal traffic involved herein. In 1953, such movement

of those commodities amounted to 25,541 cars, and the movement thereof to all destinations, including points served by the Milwaukee, aggregated 31,821 cars on which [fol. 392] the northern lines received revenue of $11,347,163. Approximately 88 percent of the forest products traffic which the Milwaukee would be able to solicit terminates in official, southern, and western trunkline territories. The cars of all traffic interchanged in that year between the northern lines and the S.P.&S., moving both eastbound and westbound, totaled 53,923, and the revenue which accrued thereon to the northern lines was $21,959,415. In the event the joint competitive rates sought are established, this traffic potentially would be available for Milwaukee solicitation.

The vice president in charge of traffic of the Great Northern testified that each of the northern lines would probably lose more than $3,500,000 annually in revenue from traffic originating and terminating on the S. P. & S., if the rates sought are made effective. The basis for this estimate is his survey of the traffic and revenues involved, his experience in meeting the competition of the Milwaukee and other railroads, and in making surveys and estimates for many years. The foregoing possible revenue loss of $21,959,415 to the northern lines is far in excess of the amount of approximately $2,500,000, previously referred to, estimated by the Milwaukee, but that estimate was based on the freight traffic which moved in some linehaul service over the Milwaukee. It did not take into consideration any traffic which moved between S. P. & S. points and points east of Spokane via the northern lines and their connections other than the Milwaukee, nor traffic which the northern lines handled to and from stations on their own lines which are also reached by the Milwaukee.

The W. T. L. lines furnished estimates of the possible loss of traffic to them in the event that the joint routes and rates sought are made effective. They emphasize the [fol. 393] fact that the considered traffic now handled by the northern lines must be interchanged at the Twin Cities, except such traffic as may be interchanged between those lines and the Burlington at Laurel and between the Great Northern and the Burlington at Sioux City, and the further fact

that the Milwaukee is able, from a physical standpoint, to handle traffic over its own lines between points on the S. P. & S., and Chicago and certain points east thereof. Presently, the Milwaukee competes with the W.T.L. lines for traffic which the northern lines cannot handle east of the Twin Cities.

All the traffic the W.T.L. lines presently interchange with the northern lines is now subject to Milwaukee solicitation, but those lines fear that if the joint rates sought become effective the Milwaukee will be able to obtain eastbound traffic at Spokane, for example, for hauls beyond the Twin Cities, thereby reducing the tonnage available for their solicitation at that gateway. They are of the view that the possibility of a two-line rather than a three-line haul from S. P. & S. origins would give the Milwaukee a definite solicitation advantage over the northern lines. The estimated annual value to these lines of the potential traffic each stands to lose is in excess of $900,000 for the Northwestern; $2,725,959 for the Burlington; $355,441 for the Rock Island, and $282,290 for the St. Louis Railway.

The record shows that in 1954 the Milwaukee received approximately 5,000 cars of eastbound freight at the Twin Cities on which the northern lines had received the long [fol. 394] haul. It is estimated by the Milwaukee that it has given to the W.T.L. lines at the Twin Cities, because of shipper routing, more than 20 percent of the traffic which it has originated, or received at western junctions, and could have hauled further. It is the complainant's purpose and desire that the routing of traffic east of the eastern gateways remain free and open to all carriers serving such gateways to the same extent as now prevails.

To show that the northern lines cannot afford to lose any portion of the traffic they are now handling, attention is invited to the rate of return on net investment of each in recent years. The Northern Pacific in 1953 showed a net return of only 2.19 percent. Its rate of return has been less than three percent in seven of the nine years beginning with 1946 and ending with 1954. A loss in freight traffic revenue of $3,500,000 annually would enable it to reduce operating expenses only about $46,000. Less traffic in substantially the same number of trains which it states would be required, would result in a less efficient and less eco-

nomical operation. In 1953 the rate of return of the Great Northern was 4.10 percent. During the nine years from 1946 to 1954, inclusive, its rate of return has ranged from a low of 3.46 percent in 1949 a high of 4.65 percent in 1948. Should this carrier's freight traffic revenue be reduced by $3,500,000 a year, it would be able to eliminate some of its eastbound trains but the resulting reduction in operating expenses has not been estimated.

Evidence was submitted by representatives of employees of the northern lines for the purpose of showing the effect upon them if there is a diversion to the Milwaukee of any portion of the traffic now handled by the northern lines. Based on 1954 average figures, the employees of the northern lines number approximately 51,000. They consist of [fol. 395] about 11,000 operating employees and 40,000 nonoperating employees. The evidence is to the effect that any one of these employees has substantial cause to fear that if the Milwaukee prevails in this proceeding either his seniority rights will be affected adversely, or, in the case of an employee with little seniority that his job will be placed in jeopardy.

Should each of the northern lines lose freight traffic revenue in the estimated amount of $3,500,000 annually, it was predicted that at least 1,063 nonoperating employees of these lines would be laid off. The job losses for operating employees was not estimated, but it was stated that the losses in that category would be substantial. The evidence shows that the northern lines pay out about 50 percent of each revenue dollar in salaries and wages, and that when business declines employees are eliminated so as to maintain the proportion at approximately 50 percent.

Reference is made to *United States* v. *Lowden* (1939), 308 U. S. 225, wherein the Supreme Court said in part at page 234: "One must disregard the entire history of railroad labor relations in the United States to be able to say that the just and reasonable treatment of railroad employees in the mitigation of the hardship imposed on them in carrying out the national policy of railway consolidation, has no bearing on the successful prosecution of that policy and no relationship to the maintenance of an adequate and efficient transportation system." Reference is also made to the de-

cision in *Cancellation of Rates and Routes via Short Lines*, 245 I.C.C. 183. In that proceeding certain carriers sought to cancel their joint rates over through routes with specified short lines. It was found that cancellation of the rates and routes would result in abandonment of the short [fol. 396] lines with resulting inconvenience and loss to shippers and to carrier employees, and permission to cancel certain of the routes was denied.

Representatives of 26 west coast lumber shippers testified in support of the defendants. Eighteen of them represented manufacturers of lumber and other forest products with 30 plants, 21 of which are served by the S.P. & S., and eight represented wholesalers. These concerns sell lumber principally, if not wholly, on a firm order basis rather than on a transit basis. Although the evidence indicates that the pattern of marketing west coast lumber has changed in recent years to the extent that transit operators are now a large and increasing segment of the industry, most of the witnesses expressed disapproval of transit wholesalers of lumber. Some of them asserted that this method of marketing lumber reduces the car supply and tends to lower the market price of lumber.

The total volume of rail shipments from the plants of the 18 manufacturers of lumber is approximately 35,000 carloads annually, of which about 21,000 are from plants served either solely by the S.P. & S., or jointly by the S.P. & S. and one or more other rail carriers. These plants, three of which manufacture plywood, are distributed throughout S.P. & S. territory with the exception that none is served by the Oregon Trunk. The total lumber sales of the eight wholesalers approximates 34,000 carloads a year.

Most of the above-mentioned lumber manufacturers and wholesalers engage to some extent in the practice of starting part loads from their plants with stops intermediate to complete loading, and also for partial unloading. Most of such stops are at points taking the same rate. These lumber shippers have had comparatively few cars rejected [fol. 397] which required diversion to other destinations. On the whole, the representatives of these shippers expressed satisfaction with the ability of the S.P. & S. to supply shippers with cars.

The evidence shows that in 1953 only 23 cars of forest products, out of a total of 31,821 cars delivered by the S.P. & S. to the northern line, were stopped at points west of the Twin Cities for partial unloading. All of these cars were made empty at the Twin Cities or points west thereof.

In addition to the foregoing, testimony in behalf of the defendants was submitted by three grain dealers and a public seating manufacturer of Grand Rapids, Mich. Two of the grain dealers purchase grain after it has been delivered in the Pacific Northwest. Between March 9, 1954, and March 18, 1955, the public seating manufacturer made 70 carload shipments to destinations in Oregon and Washington, only three of which were to S.P. & S. points. The witnesses representing these interests expressed no opposition to the routes and joint through rates sought, but merely stated as did the representatives of the lumber shippers, that insofar as their traffic is concerned they are not needed.

It is apparent that most of the opposition to the complaint arises from the assumed effects of the diversion to the Milwaukee of the full amount, or a large portion, of the traffic estimated as the potential traffic that would be subject to solicitation by that carrier for movement over its lines east of Spokane, if the joint rates should be established. [fol. 398] Upon this record it is impossible to estimate with any degree of accuracy how much traffic might be diverted to the Milwaukee if the joint rates sought were made effective. Shippers have a right to route their traffic, and where traffic is not routed by the shipper, the originating carrier has the right to control the routing within certain limitations. Whatever the amount of the traffic the Milwaukee might gain, the record indicates that it would be the result primarily of active solicitation by it to persuade shippers and receivers of freight to use its lines, either as an intermediate carrier between Spokane and the Twin Cities or for movement south and east thereof, and the value of its service to shippers. It would also depend upon the extent to which the Milwaukee and receivers of freight at points on its line use, and can get shippers to use, transit facilities available at such points so as to attract the movement of commodities thereto for transit services, and sub-

sequent reshipment beyond at the balance of the joint through rates from the points of origin.

The record reveals that shippers will not patronize the Milwaukee exclusively should the joint rates sought become effective, but that, generally speaking, they will continue to use all available routes. Some shippers herein, over the years, have adapted their sales programs satisfactorily to existing rate situations, and many do little or no business in the territory served directly by the Milwaukee.

[fol. 399] *General Discussion And Ultimate Fact Findings.*—In support of its contention that the combination rates assailed to or from points on its line, which are common with one or the other of the northern lines, or both, and from and to points on its connections, are unjust and unreasonable, the Milwaukee submitted a number of comparisons showing the differences in such rates and the competitive joint through rates on various commodities. Neither factor of the combination rates is assailed, but the aggregates of such factors are alleged to be unlawful to the extent that they exceed the competitive joint rates. The latter rates are the going rates on the traffic involved and, except for authorized general increases therein, have been in effect for a long time. Many of these rates have been approved by the Commission. There is no contention by defendants that any of those rates is below a reasonable level. It follows that the joint rates sought are within the zone of reasonableness and must be regarded as reasonable rates.

No rate comparisons were submitted by the Milwaukee in support of its allegation that the combination rates on freight traffic to and from local points on its lines are unreasonable, except on coal to S.P.&S. points from Roundup. As previously mentioned the distances from Roundup are less than those from Red Lodge, but the rates from the latter are materially less than from Roundup. The rate per ton on lump, nut, and slack coal from Roundup to Portland, for instance, is $7.25, as compared with the rates on those coals of $5.96, $5.76 and $5.51, respectively, from Red Lodge to Portland. It is apparent that the rates from Roundup should not exceed those from Red Lodge.

[fol. 400] With respect to the issues under section 15, the facts in the instant proceeding are in important respects similar to those considered in *Western Pac. R. Co.* v. *Northwestern Pac. R. Co.*, 191 I.C.C. 127, decided in 1933, and the *Rio Grande* case, *supra*. In the first, the Western Pacific alleged that the failure of the defendants therein to join with it in the establishment and maintenance of joint rates between points in California on the Northwestern Pacific Railroad Company, controlled by the Southern Pacific, on the one hand, and eastern defined groups, on the other hand, over routes in which the Western Pacific would be an intermediate participating carrier, was discriminatory and prejudicial, and that the combination rates between such points over such routes were unreasonable. Therein, division 2 said, at pages 136 and 137:

> In requesting the application of joint rates over its line complainant is not here as a shipper or receiver of traffic but solely as a carrier seeking to participate in traffic which, under the act, belongs in the absence of emergency, to the Northwestern Pacific and Southern Pacific.

The instant complainant likewise is not here as a shipper or receiver of traffic but solely as a carrier seeking to participate in traffic which the S.P.&S., and the northern lines refuse to relinquish. In the *Western Pacific* case, the short-hauling was held to be a bar to the relief sought.

The defendants emphasize the fact that the principal motivation of the Milwaukee in filing the instant complaint was to increase its revenues, and they assert that there is no public demand for the routes sought. They contend that [fol. 401] it was necessary for the Milwaukee to "stir up" shipper support, and that such support was entirely inspired by Milwaukee solicitation is shown by the testimony which indicates that only one of the shipper witnesses had made a request for the Milwaukee route prior to the hearing herein, and that several of these witnesses admitted that their appearance was the result of Milwaukee solicitation.

The record shows that both the Milwaukee and the S.P.&S. sought to interest the public in this controversy and

to inform other persons, especially shippers, as to the merits of their respective views. A number of witnesses stated that they had discussed the controversy with representatives of both sides before appearing to give testimony. All witnesses were men of responsibility in their communities and were successfully engaged in their respective occupations. Many appeared and testified in behalf of groups of producers, shipper and receivers of freight in their areas. There is nothing of record to indicate that these witnesses, whether for or against the complainant, were improperly influenced, or that the interest of any of them in the subject matter of this proceeding had been stimulated in any questionable manner.

Since the decision in the *Western Pacific* case, section 15(4) has been amended (in 1940), so that now the prohibition against short hauling is subject, not only to the exception that such inclusion of lines must not make the [fol. 402] through route unreasonably long as compared with another practicable through route which might otherwise be established, but to the additional exception that the short-hauling provision may be disregarded where the "through route proposed to be established is needed in order to provide adequate, and more efficient or more economic transportation". Thus, where as in the instant proceeding the Commission is asked to disregard the short-hauling provision, consideration must be given first, to the adequacy of the transportation, and second, to the efficiency and economy of the transportation. In *Pennsylvania R. Co.* v. *United States*, 323 U.S. 588, the Supreme Court said that the expressions "more efficient or more economic" transportation, as used in section 15(4), "may well embrace both shippers' and carriers' interests, * * * that both interests should be considered and a fair balance found". These latter considerations are not determinative unless the existing routes can be found not to provide "adequate" transportation.

The Supreme Court, in the above-mentioned proceeding, also said that adequacy of transportation relates only to the interest of the shipping public, whereas, as above-stated, efficient and economic transportation embraces both shipper and carrier interests.

As previously stated, there is no contention by the complainant that the present routes of the defendants in connection with the northern lines are not adequate for the traffic involved, and no finding is requested by the com- [fol. 403] plainant to that effect. Testimony on behalf of shippers, however, does indicate a need for more adequate and economic service than that afforded by existing routes as to some commodities.

In the *Rio Grande* case (287 I.C.C. 611, 655), the Commission in finding that through routes and joint rates via Ogden or Salt Lake City, Utah, in connection with the complainant therein, on certain commodities were necessary and desirable in the public interest, under conditions somewhat comparable with those herein, stated in part as follows:

> In order properly to evaluate the testimony of shippers it is necessary to consider the nature, extent, and functioning of our intricate and far-flung commodity marketing system. The growth of our population and the development of the country have required a constantly expanding flow of diverse commodities. Great consuming areas in many instances are far distant from the points of production of the necessities of every-day life, particularly articles of food. Movements of transcontinental proportions are involved in important instances. That is true here. A complex but efficient marketing system has been evolved to provide as orderly a distribution of food commodities as possible. Adequate transportation facilities and services are required for the proper functioning of the system. Because of their generally perishable nature, food articles, such as fresh fruits and vegetables, frozen poultry, frozen foods, butter, eggs, ordinary live stock, and dried beans, must be moved to market with expedition and care, and over as many routes as possible. This requires that many routes be open in order that unnecessary interruptions of the free flow of such commodities may be avoided and that as much flexibility as possible in the distribution process be permitted. A number of services, not only at origin and

destination, but en route, which are not usually required in the movement of ordinary traffic, must be provided for these perishable and semiperishable commodities. *Southeastern Vegetable Case*, 200 I.C.C. 273, and *Routing Lumber and Fruits, South to C.F.A. Territory*, 256 I.C.C. 223.

[fol. 404]

* * * * * * *

The shippers in the originating area involved in this complaint with respect to these commodities are debarred from effective participation in the widespread system developed for the marketing of such commodities. This conclusion is also supported and emphasized by the situation with respect to the operation of many of the in-transit privileges and services which are generally accorded such traffic and are necessary for its efficient marketing. For instance, on this traffic reconsigned or accorded transit privileges, such as stopoff for partial unloading, storing, or processing in transit, or for feeding or grazing livestock in transit, * * *

The above is applicable to the situation here respecting fresh fruits and vegetables, and livestock. In addition to these commodities, a special need has been established for joint routes and joint rates on lumber and forest products, furniture, agricultural implements, coal, grain, and iron and steel grain lines.

As heretofore shown, the differences in the distances between the existing routes and the routes sought are comparable. The operating conditions, mile for mile, on the respective routes are also shown to be substantially similar. There is evidence to the effect that the interchange of traffic at Spokane between the S.P.&S., and the Milwaukee is more complicated and less efficient than the interchange at that gateway between the S.P.&S., and the northern lines. This disadvantage apparently is offset by the ability of the Milwaukee to haul traffic direct between Spokane and Chicago, for example, whereas all traffic moving over routes in connection with the northern lines between Spokane and points east of the Twin Cities must be interchanged at the Twin Cities gateway.

[fol. 405] As previously indicated, many of the shippers submitting testimony in support of the defendants strongly oppose the transit method of merchandising which is so widely used by shippers supporting the complainant, especially those engaged in the business of merchandising lumber and forest products. The opposing shippers of these products operate primarily on a firm order basis, and their testimony, on the whole, is to the effect (1) that sending out numbers of unsold or transit cars of lumber has the effect of making lumber prices unstable, and (2) that this practice where out-of-line diversion points are utilized for purpose of delay results in a wasteful use of freight cars with consequent adverse effect on car supply.

As to (1) above it is stated that the effect which the practice of sending out transit cars has on lumber prices follows largely from the fact that if transit operators have an accumulation of unsold cars at any time and the market is "soft" their tendency is to "dump" the lumber at the place where the cars are located at the best price they can obtain there, and that depressed prices result. It is also stated respecting this matter that during periods of rising prices when the market is strong, some transit operators may hold cars off the market, and thus aggravate the inflationary trend. As to (2) above it is stated that transit operators take occasion to utilize out-of-line diversion points for the purpose of delaying cars, and that this practice ties up cars and results in inefficient use of railroad facilities. The defendants cite *Security Warehouse Co.* v. *Chicago, St. P., M. & O. Ry. Co.*, 274 I.C.C. 503, a pro-[fol. 406] ceeding involving the lawfulness of charges sought to be collected for detention of loaded freight cars caused by failure of defendant therein to effect delivery, wherein it was stated at pages 508-509:

> A shipper has no legal right to use a car as a warehouse. To best serve the needs of the shipping public, a carrier must see that its cars and tracks are released within a reasonable time * * *.

Other proceedings are referred to wherein it was stated, in effect, that the efficient use of freight cars is an essential of an adequate transportation system, and that it is in the public interest to avoid wasteful transportation.

Respecting the contention that transit sales of lumber tend to depress prices there is evidence of record, previously mentioned, to the effect that the transit method of merchandising, as contrasted with the firm order method, permits the diversion of cars from a weakening market to one of greater strength. Sales in such instances would tend to have a stabilizing effect on a market where the demand and prices are shown to fluctuate from day to day. However, it is not within the province of the Commission here to pass upon the respective merits of the two methods of merchandising. It is sufficient to state that the transit method has been used for many years and has increased in importance in recent years, at least insofar as the marketing of lumber and its products is concerned.

[fol. 407] While the Commission has never condoned the improper use of freight cars, it has never condemned such transit privileges as stopping for partial loading and unloading, the diversion of a car from one destination to another, stopping for milling or fabrication, or storage, among others. The extent that shippers may improperly use such facilities afforded by the Milwaukee is not a matter to be determined here. It is sufficient that the evidence shows that a legitimate demand exists for the additional routes herein sought.

As pointed out, the evidence shows a substantial disadvantage or handicap on the part of shippers or receivers of fresh fruits and vegetables, livestock, and lumber and forest products eastbound, and coal grain, furniture, and hogs, agricultural implements, and iron and steel grain bins westbound, who reconsign shipments of those commodities or avail themselves of transit arrangements at intermediate points on the Milwaukee, as compared with the lower rates, together with similar reconsignment and transit privileges, available to their competitors who are in a position to ship their commodities over routes composed of the defendants and the northern lines, and constitutes adequate support for a finding of undue prejudice and preference under section 3(1) of the act.

The evidence is convincing that the joint rates sought, which now apply over routes composed of the defendants and the northern lines, would be reasonable for application

also over the Milwaukee routes via the Spokane gateway on the traffic, and from and to the points, embraced within the findings of unlawfulness herein made. The allegation of unjust discrimination has not been sustained.

[fol. 408] *Findings*—Upon this record, the Commission should find:

1. That it is necessary and desirable in the public interest, in order to provide adequate and more economic transportation, that through routes and joint rates over such routes the same as apply over routes composed of the S.P. & S., and each of the northern lines and their connections be established via Spokane, in connection with the Milwaukee, on lumber and forest products, fresh fruits and vegetables, and livestock, in carloads, from points on the S.P. & S. to destinations in the United States east of Spokane, and to destinations on the S.P. & S. from points east of Spokane on coal, furniture, agricultural implements, iron and steel grain bins, and hogs, in carloads, and on coal, in carloads, from Roundup, Mont.

2. That the rates assailed on the above-mentioned commodities from and to points in the areas described in the foregoing finding are and for the future will be unjust and unreasonable, and unduly prejudicial of shippers and receivers using, or desiring to use, the Milwaukee routes and unduly preferential of shippers and receivers using the routes composed of the S.P. & S., and the northern lines, in and to the extent that they exceed or may exceed the joint rates maintained on such commodities from and to the same points over the routes of the S.P. & S., and the northern lines, and on coal from Roundup to points on the S.P. & S., to the extent that they exceed the joint rates thereon to the same points from Red Lodge, Mont.

3. That except as indicated in the preceding findings, the allegations made in the complaint are not sustained.

An appropriate order should be entered.

(Counsel's Note. App. A and App. B. of the Examiner's report are identical to App. A and App. B. of the Commission's report of 5-10-57, a part of this printed record. In the circumstances it is deemed unnecessary to print them here.)

[fol. A] Secretary's Certificate to following transcript (omitted in printing).

[fol. 1]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 31466

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, et al.,

v.

SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY, et al.

Transcript of Proceedings

Empire Room, Multnomah Hotel,
Portland, Oregon.
Thursday, June 24, 1954.

Met, pursuant to notice, at 9:30 a.m.

Before: L. H. Dishman, Examiner.

APPEARANCES:

Thos. H. Maguire and R. K. Merrill, 888 Union Station, 516 W. Jackson Blvd., Chicago 6, Illinois, and B. E. Lutterman, 609 White Bldg., Seattle, Washington, appearing for Chicago, Milwaukee, St. Paul and Pacific Railroad Company, et al., complainant.

Fletcher Rockwood and Charles A. Hart, 1410 Yeon Building, Portland, Oregon, appearing for Spokane, Portland and Seattle Railway System, defendant, and Great Northern Railway Company and Northern Pacific Railway Company, intervenors in support of defendant.

L. E. Torinus, Edwin C. Matthias, and Curtis H. Berg, 1120 Great Northern Bldg., St. Paul, Minnesota, and R.

Paul Tjossem, 404 Union St., Seattle, Washington, appear-
[fol. 2] ing for Great Northern Railway Company, intervenor in support of defendant.

G. Zan Golden and M. L. Countryman, Jr., Northern Pacific Railway Company Bldg., St. Paul, Minnesota, appearing for Northern Pacific Railway Company, intervenor in support of defendant.

C. L. Doherty, Pierre, South Dakota, appearing for Public Utilities Commission of South Dakota, intervenor.

John L. Fox, 405 State House, Boise, Idaho, appearing for Public Utilities Commission of Idaho, intervenor.

P. K. Byers, Sr., 317 Empire Bank Bldg., St. Paul 1, Minnesota, appearing for Committees for all Operating Labor Organizations representing employees in engine, train and yard service, employed on Great Northern and Northern Pacific Railroads, intervenor in support of defendant.

J. L. Pease and Henry A. Cockrum, Washington, D.C., appearing for United States Department of Agriculture, intervenor.

C. W. Ferguson and Thomas W. Dench, Public Service Bldg., Salem, Oregon, appearing for Public Utilities Commission of Oregon, intervenor.

* * * * * * * *

[fol. 38] Exam. Dishman: The hearing will come to order, gentlemen.

Mr. Maguire: Our first witness, Mr. Examiner, will be Mr. W. H. Nickels.

Exam. Dishman: The exhibit which is being distributed will be identified as Complainant's Exhibit No. 1.

(Complainant's Exhibit No. 1, Witness Nickels, was marked for identification.)

Mr. Maguire: I wonder if I might ask, Mr. Examiner, that in the initial distribution, first preference be given to counsel for the parties and the intervenors?

Exam. Dishman: Yes. We will be off the record.

(Discussion off the record.)

Exam. Dishman: We will be on the record.

W. H. NICKELS was sworn and testified as follows:

Direct examination.

By Mr. Maguire:

Q. Mr. Nickels, you have been sworn, have you not?

A. I have.

Q. And will you state your position with the Complainant, the Milwaukee Road?

A. Freight Auditor.

Q. How long have you held that position?

A. Seven years.

[fol. 39] Q. And how many years service do you have in the accounting department of the complainant railroad?

A. Thirty-eight years.

Q. As freight auditor, do you have within your custody and under your supervision records which show by commodities, number of cars, total freight charges and the Milwaukee's share of revenue on all traffic interchanged either directly or indirectly with other railroads?

A. I have.

Q. I will refer you to a 28-sheet document which has been marked for identification as Exhibit No. 1, and will refer first to pages 1 and 2. Is that a statement of traffic originating at stations on the complainant road and terminating at stations on the Spokane, Portland and Seattle Railway proper, as distinguished from its subsidiaries?

A. That's right.

Q. Noting the commodity, number of cars, freight charges—that's total freight charges, is it not?

A. That's right.

Q. Is the revenue accruing to the Milwaukee road, separated as between cars interchanged at the various interchange points, shown on those two pages?

A. That is right.

Q. Will you look at pages 3 to 7, inclusive, of this Exhibit? Is that a similar statement covering traffic origi-
[fol. 40] nating at stations on foreign lines and terminating at stations on the Spokane, Portland and Seattle Railway, giving the same data in which the Milwaukee Road participated in the haul?

A. Yes, that is correct.

Q. And if you will look at page 8, is that a similar statement of traffic originating at stations on the Milwaukee Road and terminating at stations on the Oregon Trunk Railway, giving the same supporting data?

A. That is correct.

Q. And page 9 is a similar statement as to the Oregon Trunk Railway except that it shows traffic originating at stations on foreign lines in which the Milwaukee participated?

A. That is correct.

Q. And are pages 10 and 11 of the same character, page 10 showing Milwaukee originating traffic and page 11 showing foreign line originating traffic in which the Milwaukee Road participated and terminating at stations on the Oregon Electric Railway?

A. That is correct.

Q. Pages 12 and 13, well, from 12 on, does that cover similar statements separated between railroads and origins and go along the same principle, except that it covers eastbound traffic?

A. That is correct.

Q. Separated as to the Milwaukee termination, foreign line termination and as to the Spokane, Portland and Seattle Railway, the Oregon Trunk Railway and the Oregon Electric Railway, respectively?

[fol. 41] A. That is correct.

Q. Now, on these statements covering shipments originating or terminating on foreign lines—let's take the first one, which is page 3 to 7, inclusive. Just for purpose of illustration, we will look at the top sub-heading—

Mr. Rockwood: What page?

Mr. Maguire: Page 3.

By Mr. Maguire:

Q. —which reads, "Via Racine, Wisconsin and Marengo, Washington." What does the naming of those two points mean in this statement?

A. They indicate the points at which the Milwaukee Road had the service.

Q. In other words, this is westbound traffic; the Milwaukee received these particular cars shown underneath that sub-heading at Racine, Wisconsin and turned them over to our connections at Marengo, Washington?

A. That is correct.

Q. And that these shipments were destined and terminated at stations on the SP&S Railway proper?

A. That's right.

Q. And that applies all the way through those exhibits, does it not, as to foreign line traffic in which we operated as a participating carrier?

A. That is correct.

Q. Now, what is the source of the figures shown on [fol. 42] here? Can you tell us that very briefly?

A. These were tabulated from the original interline freight settlement abstract that is distributed between carriers in settlement of interline traffic.

Q. Are they records maintained in the ordinary course of business both by the Milwaukee Road and other railroads in the country?

A. They are.

Q. Were all of the sheets shown on this exhibit prepared by you or under your supervision, and to the best of your knowledge, are they true and correct, or are there any corrections? I would like to make one correction here. I think I will strike the first part of the question. I am getting too involved.

Would you turn to page 18 of the exhibit, and I wish to refer you specifically to the last commodity item on that page, which reads: "ICC No. 555, aluminum: bar, ingot, pig, and slab, one car, total freight charges $790.24; CMStP&P revenue via Spokane, Washington and Omaha, Nebraska—". Did you make a further check on that item to see whether or not it properly belongs in the exhibit, that is, whether it originated on stations on the SP&S?

A. I did, and I found the original freight account ab-

stract was misstated. It indicated the accounting road number for the Spokane International, but indicated the road as SP&S, and it was tabulated in the draw-off and subsequently found to be incorrect. The shipment on that abstract originated at Trentwood, Washington, a point on the Spokane International Railroad.

[fol. 43] Mr. Rockwood: Do I understand the SP&S didn't have it at all?

Mr. Maguire: The SP&S didn't have that car at all, so I am going to ask that that item be stricken from the exhibit.

By Mr. Maguire:

Q. Mr. Nickels, have you corrected the last line on that page, which has a grand total of all interchanges? You have corrected those totals accordingly, have you not?

A. Yes, sir, I have.

Q. I would ask you to read that, and may I have the original and the copies of the exhibit corrected accordingly? I thought it would be handier to do it this way.

A. This particular one has not been corrected.

Q. Here it is, right here. Read it off mine. Oh, you have one there?

A. The corrected total should read, "Cars, 757."

Mr. Rockwood: Wait a minute, now.

Mr. Maguire: At the bottom of page 18.

Mr. Rockwood: I follow you, yes.

The Witness: Freight charges, $714,931.16. Milwaukee revenue, $95,080.18.

By Mr. Maguire:

Q. And have you had the remainder of the exhibit checked and do you find and are, to the best of your knowledge, are the rest of the entries on there true and correct?

A. They are.

Q. Just to anticipate further questions on it, I notice [fol. 44] there is a further item on the same page, on page 18, under the heading "Via Minnesota Transfer, Minnesota and Winona, Minnesota," you have 19 cars of the same commodity?

A. That is right.

Q. Is aluminum produced at any point on the SP&S which would account for this movement?

A. To my knowledge, it is at Vancouver, Washington.

Q. And under the heading, "CMStP&P Revenue", those figures represent the actual money or credits in lieu thereof that the Milwaukee Road actually received upon the total number of cars shown opposite each amount?

A. That is right.

Mr. Maguire: You may cross examine.

Mr. Rockwood: Mr. Examiner, here is an exhibit with a great deal of material in it which we have had but a few minutes to examine. I have one question I would like to ask, but will probably want to reserve cross examination on the balance of it.

Exam. Dishman: Will the witness be available later?

Mr. Maguire: I am not sure the witness will be available at this session at Portland, but he is stationed in Chicago. He will be available at the Chicago hearing which will later be set.

Cross examination.

By Mr. Rockwood:

Q. On page 3, via Racine, Wisconsin and Marengo, Washington, Marengo, Washington is a station on the [fol. 45] Milwaukee in Washington, is it not?

A. That's right.

Q. It's a junction also with the Union Pacific Railroad?

A. That's right.

Q. And there is no connection at Marengo, Washington between the Milwaukee and any SP&S line, is there?

A. No, sir.

Q. These eight cars which terminated on the SP&S, how did they move beyond Marengo?

A. I do not have the original abstract here, and I cannot answer that.

Q. You don't know whether they terminated on the SP&S?

A. Not without referring—

Q. You can't tell us at the present time whether the SP&S got a line haul of five miles or 500 miles?

A. Not at the present time, no.

Q. Do you know there are certain rates westbound via the Milwaukee and Marengo, thence Union Pacific?

A. That's right.

Q. And that's one of these, this line is one of that category?

A. I can't definitely answer that unless I see the abstract.

Mr. Rockwood: That's all I have at the moment.

Exam. Dishman: Any other questions of this witness? You are excused temporarily.

Mr. Maguire: May I offer this exhibit in evidence, or [fol. 46] would you prefer to reserve ruling until after cross examination?

Exam. Dishman: I will reserve ruling until after cross examination.

Mr. Maguire: That's entirely satisfactory. Call Mr. J. P. Kiley.

J. P. Kiley was sworn and testified as follows:

Direct examination.

By Mr. Maguire:

Q. Mr. Kiley, you have been sworn, have you not?

A. Yes, sir.

Q. And you are the President of the Complainant, the Chicago, Milwaukee, St. Paul and Pacific Railroad, are you not?

A. Yes, sir.

Q. Would you state briefly your railroad experience?

A. I have been working with the Milwaukee for about 40 years. I started in the Engineering Department, then the valuation, finance and accounting operation, was Vice President at Seattle and then was Operating Vice President at Chicago and since September 1, 1950 have been President.

Q. In order to furnish a background for this controversy,

would you give a brief description of the mileage and territory served by the Milwaukee Road direct?

A. We have approximately 10,600 miles of road extending from a connection with the New York Central at West- [fol. 47] port, Indiana, in the southeastern part of the State, through Chicago to Kansas City, Omaha, Northern Michigan Peninsula at northern Michigan, through Wisconsin, the Twin Cities, through the northern part of Iowa to Rapid City, through the southern part of South Dakota and through the center of and northern part of South Dakota, through Aberdeen, Mobridge, Miles City, Butte, Spokane and Seattle and Tacoma, with branch lines through that territory, and with rights of operation into Longview, Washington.

Q. And through Iowa and South Dakota in particular, does the Milwaukee Road quite thoroughly cover those States, both east and west and north and south?

A. Yes, sir. We have two lines, three lines through the eastern part of Iowa, two lines going clear across the State, with three lines connecting those two lines.

Q. And at our eastern termini, do we have full access to and connections with lines serving the eastern and southern part of the United States?

A. Yes, sir.

Q. And at Omaha and Kansas City, does our line connect with and interchange traffic also at—I should say, Council Bluffs and Kansas City, do we interchange traffic with transcontinental railroads and southwestern railroads serving the south Pacific coast and the southwestern part of the United States?

A. Yes, sir.

Q. Now, then, I wish to go very briefly into the back- [fol. 48] ground of the question of policy which dictated the filing of this complaint at the present time. Now, what was the situation? We will take lumber and forest products to start out with. What was the situation with respect to supplies of lumber and other forest products in territory tributary and adjacent to the Milwaukee Road at the time of our extension to the Pacific Coast in 1909 and for years subsequent thereto?

A. Until more recent years, Washington was considered the center of the lumber production, and the State of

Washington was the largest lumber producer in this whole area. We had immense amounts of timber tributary to our line, as they were to all the other lines, and during the intervening period, there has been a great deal of depletion of those timber resources.

Q. May I interrupt you just a moment, Mr. Kiley, on that? Now at the time when your supply was abundant, as you have testified, was the Milwaukee able to furnish a through route from production and manufacturing points to the entire territory served, not only by the Milwaukee but also by our connections?

Mr. Rockwood: That is a leading question, Mr. Maguire. Up to the moment, you have been testifying more than Mr. Kiley. Can't you frame your question to avoid leading questions?

Mr. Maguire: If you want to be very technical—

Mr. Rockwood: That isn't very technical.

Mr. Maguire: I don't think it is a leading question because I asked him whether we were able to furnish a [fol. 49] through route from production and manufacturing plants—

Mr. Rockwood: If I may be allowed to respond to that, the question can be answered "Yes" or "No." Of course, a leading question can be answered "Yes" or "No." Please refrain from asking leading questions.

Mr. Maguire: If you have any objections, I would rather you state them to the Examiner than to upbraid me about it.

Exam. Dishman: Proceed. Did you answer the question?

Mr. Maguire: No. He didn't get a chance to.

The Witness: Of course, with large timber resources adjacent to our line, we were able to furnish all of the timber that might be consumed in our area and were able to provide through routes for it. We had immense timber resources that had every species of lumber, every grade of lumber, and lumber to meet any specification, adjacent to our line, so that we could perform all of that through service.

Q. What about our ability to perform this through service over our line to connections east of our line?

A. It was the same thing. The same thing is true with respect to local points on our line.

Q. Now, I interrupted you there. You started some statement about the picture changing as to the State of Washington being your main or a substantial production point.

A. Yes. With the depletion of timber resources in Washington, the center of production, center of source [fol. 50] moved southward into Oregon, and that, I think, is pretty well illustrated by the movement of the headquarters of the West Coast Lumbermen's Association, I think, which was in the latter part of 1946 from Seattle to Portland.

Now, that same thing is illustrated quite clearly with the fact that a considerable portion of the logs that are used to make plywood in Washington are shipped either from Oregon now, or shipped in the way of peelers or plywood peeling for fabrication in Washington.

Q. Do you have any general knowledge as to the availability of all of the different species, specifications, grades and so forth of lumber between the two States of Oregon and Washington and the trend in that respect?

A. I think the records of production of fir timber, which is one of the principal grades that was produced in western Washington, the transfer of the production, not the transfer, but the gradual either reduction or lesser percentage of such timber coming from Washington, is indicated in some of the Forest Service records. For example, up until 1940, there was considerable more fir produced in Washington than there was in Oregon. The figures in 1940 from the United States Forest Service show there were 3,618,000,000 feet produced in Oregon in 1940. There were 3,971,000,000 in Washington. In 1952 the fir production in Oregon was 6,344,000,000 and in Washington, 2,810,000. That's a gradual change from the earlier period. For [fol. 51] example, in '25, the fir production in Oregon was 3,167,000,000 and in Washington it was 6,347,000,000.

Mr. Rockwood: Would you repeat the 1952 figures? Oregon was what?

The Witness: 3,167,000,000 and in Washington, 6,347,000,000.

By Mr. Maguire:

Q. With this shift which you have testified to as to the greater ability of all grades and specifications, particularly of fir in Oregon, has there been any corresponding change in the routes and rates generally available to the shippers of lumber and forest products from the Pacific Northwest to the consuming areas in the middle west and the area east and south of Chicago?

A. No, there has not.

Q. And what has been your observation as to the result of this absence of through rates, so far as our company is concerned, upon the marketability and movement of lumber and forest products from SP&S territory to points on our line, particularly west of the Twin Cities and points beyond?

A. Well, of course, it puts a barrier between the shipments from points in Oregon into our territory, particularly west of the Twin Cities, because of the lack of any diversion feature. With a considerable portion of lumber being sold that is later diverted, or shipped that is later diverted, certainly no one would be interested in shipping lumber into our territory because if they had to divert it, [fol. 52] they would be stopped from diverting it at the same cost as if they had through rates in effect.

Q. You mean diverting outside of our line?

A. Yes, sir.

Q. Now, then, as to westbound traffic, that is traffic which we originated and which we have the physical facilities to carry through to Spokane and there interchanging with the SP&S, what did you find to be the situation with respect to that?

A. Well, the fact that we are unable to obtain through rates, joint rates with the SP&S makes it necessary for us to short haul ourselves because we are forced to give that traffic to the Northern Pacific or Great Northern at the Twin Cities when we could haul it clear to Spokane, and it short hauls us, therefore, about 1500 miles.

Q. Now, to go to another phase of the considerations here, what was the experience of our railroad with respect

to handling transcontinental traffic during World War II and some years thereafter?

A. Well, *of course*, during World War II, the amount of traffic moving to the west Pacific coast taxed the facilities of all three of the railroads, the Great Northern, Northern Pacific, and Great Northern.

Q. And ourselves, you mean.

A. Yes, and ourselves. At that time, of course, we all had approximately or about all the traffic that we could get [fol. 53] labor, material and equipment to handle, but with the diminution of that traffic after World War II, it had serious effect on our revenues, and while we made all the economies which were possible in our operation, the fact is that we also had, in order to do the job that we were supposed to do, to look at our traffic pattern to see what was happening in connection with traffic that would indicate that we were not getting what we should get.

One of the things we developed was this situation with respect to the lack of joint rates with the SP&S.

Q. Mr. Kiley, have you had a study made of the movements and revenues shown in Mr. Nickel's Exhibit No. 1 for the year 1952?

A. Yes, sir.

Q. And did you obtain total figures showing the number of cars we would have handled and actual earnings we would have received if there had been in effect during 1952 the through routes and joint through rates which are the subject of the Complaint?

A. Yes, sir.

Q. Would you state what those conclusions are?

A. Well, in 1952 we originated on our line 488 cars of freight destined to points on the SP&S System, which produced total revenues of $432,939. All but eight of those cars were yielded to the Northern Pacific and Great Northern at eastern gateways. Our actual share of the earnings was $77,160, whereas, if we had handled these cars to Spokane, our earnings would have increased by approximately $240,000.

[fol. 54] Mr. Rockwood: You went pretty fast, Mr. Kiley. Your actual revenue is how much?

The Witness: $77,160.

Mr. Rockwood: And you would have had—

The Witness: Approximately $240,000, and, that is, would have been increased by $240,000. That would make our total revenue approximately $317,000.

During the same period we received from eastern and southern connections 559 cars destined to SP&S System points, and all but ten of those we had to yield to the Northern Pacific and Great Northern at eastern gateways. These 559 cars produced total revenues of approximately $659,000. Our share was $94,500, and if we had handled these cars to Spokane, our revenues would have been increased approximately $336,000.

Mr. Torinus: What would have been your revenue, Mr. Kiley?

The Witness: $437,000, approximately. Now, during 1952, the SP&S originated 3,319 cars which were shipped to points on the Milwaukee Road. The total revenues were approximately $2,300,000. We received the eastbound haul at Spokane of only 491 of the cars. The remainder were delivered to us at eastern gateways by the Northern Pacific and Great Northern and their connections. If we had handled all of these cars through the Spokane gateway, our share of the revenues would have been increased by $1,337,000.

Mr. Rockwood: One million, what?

[fol. 55] The Witness: $1,338,000.

Mr. Torinus: On that traffic, Mr. Kiley, do you have the figures on the amount of revenues you actually received and the figures on the amount you would have received if joint through rates had been in effect?

The Witness: Approximately $439,000.

Mr. Torinus: That's the amount you received?

The Witness: Yes.

Mr. Torinus: And how much would you have received under joint through rates?

The Witness: $1,777,000. Now, during that same year, there was moved eastbound from the SP&S System, 2,019 cars destined to points on our connections on which we received an intermediate haul. All but five of these cars came to us through eastern gateways. The total revenue on these cars was $1,922,000. We received $240,000, and if

we had handled the traffic from Spokane, our earnings would have been increased $927,000, or our total revenues would have been $1,167,000.

Our grand total increase in revenues would have been approximately $2,812,000.

By Mr. Maguire:

Q. Now, in these estimates, has there been taken into consideration any traffic in which the Milwaukee Road did not actually participate in the line haul?

A. No.

Mr. Rockwood: Would you read that question?

[fol. 56] (Question read.)

By Mr. Maguire:

Q. Do you intend to imply by this testimony that we would have actually received all of this long haul and the increased revenues if the rates and necessary routes had been available?

A. No, but we would have had an opportunity of soliciting the traffic, which we do not have at the present time.

Q. And why is it that you are offering the figures which you have just given us?

A. Just to illustrate that there is a substantial amount of revenue that we are being deprived of the opportunity of soliciting because of the rate situation and the divisions, the joint rate situation.

Q. Well, now, can you state briefly the reason for filing the instant complaint in this case?

A. Well, it is two-fold: First, to preserve to our railroad at least the opportunity of soliciting business which we believe we are lawfully entitled to share and to open up territory via our line which is now closed to producers and shippers of commodities produced in and shipped into the Pacific Northwest.

Q. Have you anything further to add, Mr. Kiley?

A. No.

Mr. Maguire: You may cross examine. May I make this statement for the record? I think it's only fair because of the explanation I made off the record that, as Mr.

[fol. 57] Kiley, I think, stated, we will have, and as I stated off the record, we will have witnesses later available who will show the manner of making the computations upon which conclusions Mr. Kiley testified to and which were based on Exhibit No. 1 for identification, and I will freely stipulate if we do not produce such testimony, of course, Mr. Kiley's figures may be disregarded as not supported by testimony.

Mr. Rockwood: Mr. Examiner, may I have read by the reporter the statement of the witness as to his second reason? I think it began "—and to open up new territory."

(Portion of answer read.)

Mr. Maguire: I think I had better clarify that answer. I am sorry there was a misunderstanding by the reporter.

Mr. Rockwood: In the first place, I move that the statement by the witness which counsel wishes to correct be stricken from the record as relevant only on the matter of possible violation of Section 3 (1), which is not in issue in this case.

Mr. Maguire: It is not offered in any possible or remote connection with Section 3 (1) at all. We are stating the reason why this Complaint was filed.

Exam. Dishman: Well, in view of that, the motion is denied.

Mr. Maguire: I think I am going to correct the record here.

Mr. Rockwood: I can even correct your witness, if you like.

Mr. Maguire: I think we might as well correct the record now—the producers and shippers of commodities pro-[fol. 58] duced in the Northwest—isn't that what you meant to state?

A. Yes, and also commodities that are shipped into the Northwest.

By Mr. Maguire:

Q. But when you talk about territory via our line, do you mean territory upon our line primarily which is now, by the present rate adjustment, closed territory?

A. Yes.

Q. To shipments from the Northwest?

A. Yes.

Mr. Maguire: You may cross examine.

Cross examination.

By Mr. Rockwood:

Q. You don't know anything about the rate structure applying over routes other than the SP&S and the northern lines and over the Milwaukee, do you?

A. You mean, by the rate structure, the rates, whether they are any different on one line and another?

Q. No, whether the rates are available via any route to or from Oregon and Southern Washington destinations via lines other than the SP&S, the Great Northern, Northern Pacific and Milwaukee?

A. No, I am not generally familiar with the rate structures of all of the other roads.

Q. So you don't know anything about the opportunity that the consumer of lumber, we'll say in Iowa, has to get it from sources other than movement over the SP&S lines? You don't know anything about that?

A. I don't quite understand that question.

[fol. 59] Q. Are you familiar with the fact that shippers from some of this territory could move Union Pacific all the way to Omaha and thence via connections right into this territory?

A. No, I am not familiar with the SP&S and Union Pacific.

Q. I didn't say the SP&S and Union Pacific. I said the Union Pacific alone.

Exam. Dishman: Will you read the question?

(Question read.)

By Mr. Rockwood:

Q. I mean the Iowa middle western territory.

A. You mean shipments from points along the Union Pacific into the Iowa territory?

Q. Points on the SP&S which could move Union Pacific right into Iowa territory. Are you familiar with that situation?

A. No.

Mr. Maguire: If the situation exists, of course.

Mr. Rockwood: Of course.

By Mr. Rockwood:

Q. Are you familiar with the extent to which Southern Pacific routes are available out of the Willamette Valley into Iowa and the Dakotas and Wisconsin, Illinois?

A. I am not familiar with what the rates are from the Southern Pacific into that territory. I know that there is considerable lumber moving from Oregon via the Southern Pacific and their connections into Iowa and Illinois. Now, what the situation is with respect to South Dakota, I am not familiar with.

Q. Well, since you are not familiar with the rate struc-
[fol. 60] ture and the rates and routes available to these producers of the lumber, we'll say out here, you cannot tell us or you do not know what competition the Milwaukee would have to meet in soliciting this business over the SP&S-Milwaukee route?

A. I think I am pretty well familiar with the competition that they would have to meet with respect to other people that serve in this territory and that where the movement is via direct, another route. I know that the territory out here, particularly east of Omaha and east of the Twin Cities, is very competitive because of the number of roads that are involved in that territory, in addition to the Milwaukee.

Q. And aren't there a vast number of instances, to your knowledge, where the shipper today may not be able to move over the SP&S-Milwaukee route, but he can get everything he wants over alternate routes?

A. I am not familiar enough with that to say.

Q. Now, in these figures you gave of the shift of the production of fir lumber from Washington to Oregon, those are figures for the entire State of Washington and the entire State of Oregon, are they not?

A. Yes, sir.

Q. Do you know how that is split in Oregon into areas, we'll say, north and south of Eugene?

A. No, sir.

Q. You know the SP&S does not reach south of Eugene?

[fol. 61] A. Yes.

Q. And you know that even if you prevail in this case, you couldn't get into the timber south of Eugene?

A. That's right, through this route, any more than the SP&S could.

Q. During World War II, you say all the railroads, the three lines, Great Northern, Northern Pacific and Milwaukee, were just about as busy as they could be?

A. Yes, sir.

Q. And you weren't looking around for any more business then, were you?

A. Well, of course, I never heard of any railroad that turned down business.

Q. But you had about all you could handle?

A. They were pretty well taxed, all of them.

Q. And there was no occasion at that time to look around for a chance to get into the Oregon timber because you couldn't have handled it anyway, could you?

A. Well, of course, there was no occasion then because, while we might have been able to handle eastbound because our business was very greatly westbound, because of the war effort, we had about all we wanted to do to keep enough force on hand to handle the business we had.

Q. And with the fall-off of revenues in the postwar period, you were disturbed, were you not, by your fall-off in revenues?

A. Yes, sir.

[fol. 62] Q. And then you began to look around for other business?

A. Yes, sir.

Q. And one of the sources of new business that you looked for to increase your revenue was a chance to get into this Oregon territory now served by the SP&S?

A. Yes, there was more difference between our feeling

about the Oregon territory than there was about any other traffic available to us.

Q. That's right. One of the purposes was to increase your revenue position, was it not?

A. That's right.

Q. And that was one of the purposes of filing the complaint, was it not?

A. That's right.

Q. Yes. Now, was the principal motivation in the filing of the Complaint to increase the revenue at the expense of somebody else or to take care of a man back in Iowa who cannot now ship and transit on through rates via the Milwaukee?

Mr. Maguire: Just a moment. I might suggest, Mr. Examiner, that that question is argumentative. It's a good deal like the question, "Have you stopped beating your wife?"

Mr. Rockwood: Nonsense. There is no—

Mr. Maguire: Just a moment. The implication is obvious. It is an unfair question to ask the witness. He said, "Do you want to get revenue at the expense of someone else," and I think it is purely argumentative.

[fol. 63] Mr. Rockwood: I will drop this question for the moment and develop that.

By Mr. Rockwood:

Q. Coming over to these figures, Mr. Kiley, you gave a figure at the beginning of 1952, for the year 1952, 488 cars, gross revenue, $432,000—

A. Yes, sir.

Q. Do you have those figures before you?

A. Yes.

Q. And the Milwaukee, as I read my notes, got all but eight of those cars at eastern gateways?

A. No, we handled only eight cars west of the Twin Cities. All of the rest of them we had to give the Great Northern and Northern Pacific at the Twin Cities or eastern connections.

Q. Is this a westbound figure you gave me?

A. Yes, sir.

Q. Excuse me. In other words, all but eight of them were delivered to the Great Northern or Northern Pacific at the Twin Cities?

A. Yes, sir.

Q. And your revenue actually was $77,160?

A. Yes, sir.

Q. If you had been able to handle those cars through on joint through rates with the SP&S, your handling being all the way to Spokane, your revenue would have increased $240,000?

A. Yes, sir.

[fol. 64] Q. Would the shipper have paid any more for his total freight bill than he actually did pay?

A. No.

Q. All right, then, the $240,000 that you would gain would necessarly be at the expense of the Great Northern and Northern Pacific, which they would lose?

A. That's right, and the reason we think that ought to have come to the Milwaukee is because we originated that traffic on our railroad.

Q. That is beside the point, what you feel you should get, but Mr. Maguire objected to my statement "at the expense of somebody else."

Coming down through those series of computations that you gave us, the fact is that every one of those figures which you gave for the increase in Milwaukee revenue, had Milwaukee been able to handle to and from Spokane, would have been at the expense of the Great Northern and Northern Pacific, would it not?

A. I think that's right.

Q. All right, so I renew my question, what was the principal motivation in the filing of this Complaint, your desire to increase revenue or your concern about the lumber dealer, we'll say, in Iowa who couldn't transit on the Milwaukee, lumber?

A. Naturally, our principal motivation was to increase our revenues.

[fol. 65] Mr. Rockwood: That's all I have.

Mr. Torinus: I have one or two, Mr. Kiley, if I might be permitted to examine.

Exam. Dishman: Go ahead.

By Mr. Torinus:

Q. Mr. Kiley, were you the one who authorized the filing of this Complaint?

A. Yes, sir.

Q. And, I take it, you are familiar with the language of the Complaint, personally familiar?

A. Well, I have read it.

Q. Was the decision on the part of your railroad to file this complaint the subject of a considerable amount of deliberation and consideration?

A. Yes, sir.

Q. Now, I notice in paragraph 9 of the Complaint, it is alleged "The opening of an additional through route for all traffic via Complainant's line would provide adequate and more efficient and more economic transportation—" Are you familiar with that?

A. What?

Q. Paragraph 9 on page 10 of the Complaint.

A. Yes, sir. What was your question?

Q. I would like to ask you a question or two about that allegation. First, considering the allegation that the opening of a new route via the Milwaukee would provide adequate—strike that—would provide more efficient and more [fol. 66] economic transportation—and this question will relate to more efficient and more economic transportation from the railroad's standpoint—

Mr. Maguire: Go ahead.

By Mr. Torinus:

Q. Are you familiar, Mr. Kiley, with the operating expenses of the Milwaukee Railroad per revenue car mile for 1952 or for 1953 as compared with those of the Great Northern and the Northern Pacific?

Mr. Maguire: Just a moment, before you answer that, Mr. Kiley. If the Examiner please, I object to the question on two grounds and that is, improper cross examination. Mr. Kiley is not here as a witness to prove the entire case of the Milwaukee Road. He testified on some very restricted

points and that is, the considerations which prompted the filing of the Complaint, which were two-fold, and the opening up of additional territory on our line to producers in the Pacific Northwest and the very natural desire for the increase of revenues which are resulting from a violation of Section 3 (4) of the Act by the SP&S.

Now, he is not produced here as a witness to show, or did not testify on direct as to whether or not the proposal is more economic or efficient.

Mr. Torinus: I will withdraw that question and get at the matter in another way.

By Mr. Torinus:

Q. Mr. Kiley, is it your contention or the Milwaukee's contention in this case that the opening of a new route [fol. 67] via the Milwaukee Railroad will provide more efficient and more economic transportation from the railroad's standpoint?

Mr. Maguire: Objected to upon the same grounds, improper cross examination. We are not attempting to prove our entire case by Mr. Kiley, and that subject was not touched upon in direct, and it is improper cross.

Mr. Torinus: Do I understand then, Mr. Maguire, you will have another witness who will cover this specific point?

Mr. Maguire: We will have other witnesses in the case and prove our case in our own manner. The only thing I am objecting to at this time is that it is improper cross examination, and I do not intend to give you an outline of the precise manner of proof we will introduce later on.

By Mr. Torinus:

Q. Mr. Kiley, are you at all familiar with the fact of whether it is or is not so, or may or may not be so, that the opening of a new route via the Milwaukee Railroad, an additional through route on the traffic involved, will provide more efficient and more economic transportation from the railroad's standpoint?

Mr. Maguire: Same objection on the same grounds. It's the same old question, with a slightly different twist.

Mr. Torinus: I think the question is proper. This man is President of the Railroad. He says he is authorized and did authorize and direct the filing of the Complaint, read it, and is generally familiar with its language. This is an [fol. 68] allegation in the complaint, and I think I am entitled to an answer.

Exam. Dishman: Well, the witness may answer if he has any views on the subject.

The Witness: Would you read the question?

(Question read.)

Mr. Maguire: I have a further objection, Mr. Examiner, and that is that those words as they are used in the Interstate Commerce Act are not related to the question of railroad operation. The Supreme Court of the United States in Pennsylvania Railroad versus U. S. held that it was a question of whether from the public point of view, more efficient, more adequate and more efficient and economic transportation results, so the operating costs, relative operating costs of the railroads involved here would have no materiality. That's a further ground.

Mr. Torinus: With respect to Mr. Maguire's latter statement, the Supreme Court in Pennsylvania versus United States said it was the duty of the Commission, in considering the question of whether the opening of new through routes would provide more efficient and more economic transportation, to consider the question of efficiency and economy from the railroad's standpoint, and also to consider the question of economy from the shipper's standpoint and strike a fair balance.

Exam. Dishman: Well, we have a very competent witness on the stand. He may comment on that.

The Witness: Would you read the question again, please? [fol. 69] (Question re-read as follows: Mr. Kiley, are you at all familiar with the fact of whether it is or is not so; or may or may not be so, that the opening of a new route via the Milwaukee Railroad, an additional through route on the traffic involved, will provide more efficient and more economic transportation from the railroad's standpoint?)

The Witness: Of course, I can only testify, I think, in connection with what it would do to the Milwaukee, and I think it will provide a more efficient and economic transportation for the Milwaukee and, it seems to me, would also provide a more efficient and economic transportation for the shippers in the territory where there is now a barrier, and that is in South Dakota and the midwest territory, west of the Twin Cities.

Mr. Torinus: My question, Mr. Examiner, related to more efficient and more economic transportation from the railroad's standpoint. I will ask that the reference to the more economic transportation from the shipper's standpoint be stricken as not responsive, and to the extent it may relate to Section 3 (1), be stricken as outside the issues.

Exam. Dishman: As not being responsive to your question?

Mr. Torinus: Yes.

Exam. Dishman: Can you give him a direct answer?

The Witness: I gave about as direct an answer as I could give.

Exam. Dishman: From a railroad's standpoint?

[fol. 70] The Witness: I gave him that point, too.

Mr. Torinus: May I have a ruling?

Exam. Dishman: Yes. I will grant that motion.

By Mr. Torinus:

Q. Mr. Kiley, are you prepared to support the allegation in the Complaint that the opening of a new route via the Milwaukee Railroad will provide more efficient and more economic transportation?

A. You mean personally?

Q. More economic transportation from a railroad's standpoint than the transportation that is now afforded under existing routes by the Northern Pacific and Great Northern?

A. You mean personally?

Q. Yes.

A. I am not.

Mr. Maguire: It is understood, is it not, Mr. Examiner, that my objection to this line of questioning, which I first voiced, extends throughout the entire line of questioning?

Exam. Dishman: That is right.

Mr. Torinus: I have no further questions at this time.

Mr. Rockwood: With the permission of the Examiner, I would like to ask a few more questions on cross examination.

Exam. Dishman: All right.

By Mr. Rockwood:

Q. You gave these figures, Mr. Kiley, of the revenue loss, or the revenue gain which the Milwaukee would enjoy if it could retain the long haul on traffic between the Twin [fol. 71] Cities or other eastern gateways and Spokane, and you came up with a total gross revenue increase of $2,812,000. You recall that figure, do you not?

A. Yes.

Q. Well, now, as a matter of fact, if the Milwaukee prevailed in this case, it would not be limited to solicitation of the business similar to that which it has handled in the past, would it?

A. No, sir.

Q. It would solicit in this territory for all of the business originating on the SP&S or terminating on the SP&S which the Milwaukee could handle?

A. Yes—be on the SP&S.

Q. So the gross revenue increase which the Milwaukee is, we'll say, shooting at in this case is vastly more than $2,812,000?

A. Well, naturally, there is a certain amount of that revenue that is included in here we may not get. We think we have a chance of getting some of it.

Q. I said the revenue increase you are shooting at—

A. Well, you mean the amount of the revenue available to us for solicitation is vastly greater. We haven't any figures on that. I assume it would be.

Q. One other question: We talked, or I talked with you as though the revenue loss would be revenue loss of the Great Northern and Northern Pacific if you prevailed and [fol. 72] could keep your hands on this traffic from the eastern gateways to Spokane or eastbound the same way. As a matter of fact, these revenue gains that you talk about

would also be at the expense of other connecting lines east of the Twin Cities, would they not?

A. No. I do not believe that's the way they worked up on the basis of what our revenue would be.

Mr. Rockwood: All right. That's all.

The Witness: The revenue between the Twin Cities and Spokane—

Exam. Dishman: Is that all of the cross examination?

Mr. Rockwood: I have nothing further.

Redirect examination.

By Mr. Maguire:

Q. Mr. Kiley, Mr. Rockwood has endeavored to bring out the fact that whatever would be retained by the Milwaukee of that additional $2,800,000 would be at the expense of carriers who now enjoy through rates with the SP&S. You understood that, did you not?

A. Yes, sir.

Q. And is it the position of your company that those carriers are not by law entitled to a monopoly on the movement of such traffic?

Mr. Rockwood: Objected to as calling for a conclusion of the witness.

Exam. Dishman: I will sustain the objection. If you can get at it some other way—

[fol. 73] Mr. Maguire: I think I made the point.

Exam. Dishman: Any further questions? Witness excused.

(Witness excused.)

Mr. Maguire: Call Mr. P. H. Draver.

PAUL H. DRAVER was sworn and testified as follows:

Exam. Dishman: Let the record show that the exhibit which is being distributed will be marked for identification as Complainant's Exhibit No. 2.

(Complainant's Exhibit No. 2, Witness Draver, was marked for identification.)

Direct examination.

By Mr. Maguire:

Q. Mr. Draver, you have been sworn as a witness, have you?

A. Yes, sir.

Q. Your full name is Paul H. Draver?

A. That's right.

Q. And you are Vice President in charge of traffic of the Complainant Railroad?

A. Yes, sir.

Q. And how long have you held that position?

A. Oh, about four years.

Q. And how many years' experience as an officer in the traffic department of the Milwaukee Road have you had?

A. About 30.

[fol. 74] Q. Now, I want to ask you about a question with particular reference and sole reference to paragraph 11 of our Complaint in this case, which alleges, in substance, that we do not, in this proceeding, seek exclusive joint through rates or through rates restricted to our line between the eastern gateways and points east thereof on any traffic originating or terminating on the lines of the defendants and interchanged between our company and the defendants at Spokane, but, on the contrary, it is our purpose and desire that the routing of such traffic east of the eastern gateways remain free and open to all carriers serving said gateway to the same extent as now enjoyed by such carriers.

A. That is correct.

Q. And is it our policy that, as a matter of policy, are we willing that the conditions and restrictions set forth in paragraph 11 of the Complaint, which I have just re-

counted to you in substance, be attached as a condition to any Order which may issue in this case?

A. We are willing.

Q. Now, with regard to the solicitation of business to and from the area served by the line of the SP&S System, would you tell what our policy would be if this Complaint were granted?

A. Well, we naturally would expect to solicit any traffic that was available by any route in which we might participate.

Q. So far as solicitation is concerned in the area served by the SP&S System, do other carriers serving western [fol. 75] trunk line territory territory, which is the territory east of the eastern gateway described of length, do they have active solicitation forces on the west coast and particularly, and we will include, well, I should say, SP&S territory?

A. They certainly have.

Q. And from your observation of advantage in solicitation, would our solicitors in SP&S territory be at any advantage over other western trunk line carriers?

A. I doubt it. We wouldn't be the original carrier. We would have no control over the business.

Q. And on westbound business terminating on the SP&S where the consignee may control the routing, would the same condition apply?

A. I think westbound business would probably be a little different, particularly where it originated on our railroad.

Q. But at the present time on the route through the Twin Cities, Minnesota Transfer interchange, do we actively solicit the organization of such traffic?

A. We do.

Q. I will call your attention to a single sheet marked for identification Exhibit No. 2, and will you state very briefly what that exhibit covers?

A. Well, this is the statement lifted from the AAR Car Service Division, semi-monthly revenue car location summary of June 4, which shows the ownership of various types of revenue and freight car equipment owned by [fol. 76] the Milwaukee, Great Northern, Northern Pacific and SP&S. It indicates that we own a total of 55,033

freight cars. The Great Northern owns 38,738; the Northern Pacific, 37,086; the SP&S 3,444.

Included in the total is plain box, of which we own 27,513 cars; the Great Northern, 21,060; the Northern Pacific, 19,685; the SP&S, 2,048.

Q. And does the Milwaukee Road, as a rule, have sufficient equipment on its line, including its own ownership, to handle all its needs and also to furnish substantial amounts of equipment to other lines?

A. Generally, yes.

Q. And what is our practice with regard to the furnishing of empty equipment to connecting lines?

A. Well, on the receipt of advice of necessity, it is our practice and has been, to furnish connecting lines with equipment for return loading via our line.

Q. Are those cars necessarily ear-marked, or upon just a general understanding?

A. They are turned over to the line that needs the equipment for their distribution, generally.

Q. And as a matter of business policy, do we, however, in these voluntary turn-overs, turn them over where we have reasonable expectation of getting a line haul out of it?

A. Yes, we certainly expect to get a line haul.

[fol. 77] Q. And if these rates were made available through Spokane via the SP&S, would we follow the same practice with SP&S?

A. If they wanted cars, we would.

Q. Now, then, do we have sufficient cars in our possession, including our own ownership currently, not only to cover these specific requests for connecting lines, but also to report additional cars as excess to the AAR for distribution?

A. Yes. If we have surplus system and foreign cars on the line that we can't dispose of through our own efforts, we report them to the AAR and they generally direct the cars to the territories where they are needed.

Q. But that is only after we have made our own disposition?

A. That is correct.

Mr. Maguire: You may cross examine.

Cross examination.

By Mr. Rockwood:

Q. On the matter of car supply, is your car supply situation a bit different from that, and policy a bit different from that of the Northern Pacific and Great Northern?

A. I am not familiar with their policy.

Q. Do you know—

Mr. Maguire: Just a moment. He said he didn't know. That is argumentative.

Mr. Rockwood: I heard the answer.

By Mr. Rockwood:

Q. Do you not know, as a fact, the Great Northern and the Northern Pacific, reporting through the AAR, generally [fol. 78] do the very same things you say the Milwaukee does?

A. I presume so.

Q. Yes. Now, do you know anything about the need of the SP&S for more cars from the Milwaukee?

A. I haven't heard anything about it, no, sir.

Q. So far as you know, the SP&S has got all the cars it needs and is full up to the ears with supply through the Great Northern and Northern Pacific?

A. I am no authority on what the SP&S has.

Q. Yes, but then, so far as you are advised, the SP&S would never have any occasion to come to you for more cars?

A. I am not too sure.

Q. You are not too sure, but do you know?

A. Well, those cars that we delivered in the last 13 months on AAR directive, many went to the Great Northern, Union Pacific, CB&Q, and the Northern Pacific. What they did with them, we don't know.

Q. Well, as a matter of fact, you got more loads, or a great many loads from those lines, did you not?

A. We have no way to check.

Q. Do you know whether the loads you received from the Great Northern, Northern Pacific and the Burlington were more or less than the empties you delivered to them?

A. I have no knowledge of that.

Q. In your Exhibit No. 2, you show 999 refrigerators, [fol. 79] tanks and others owned by the Great Northern. Do you know how many, if any, of those are owned by the Western Fruit Express?

A. I couldn't tell you. As I say, this statement was taken from the AAR Car Service Division report.

Q. Are those 2,413 reefers, tanks and others owned by the Milwaukee wholly owned by them, or do they include—

A. No.

Q. —some private cars?

A. Some private cars.

Q. Yes. What refrigerator line do you have a contract with?

A. Union Refrigerator Transit and DSDX.

Q. And this 2413 includes some of the Union Refrigerator cars?

A. Both.

Q. You don't know how many of each?

A. No.

Q. You don't know today, how many reefers, as such, are owned by the Milwaukee?

A. I think 600.

Q. About 600. Are they ordinary reefers or specially equipped?

A. No, they are special cars.

Q. Now, you have been quite specific in your comments on paragraph 11 of the Complaint, that you propose to leave everything wide open east of the eastern gateways.

A. As it is today.

Q. As it is today?

[fol. 80] A. That's right.

Q. Don't you expect to derive some advantage from this in the matter of long haul traffic from Spokane and keep to yourselves some traffic now moving out of eastern gateways via other western trunk lines?

A. Well, we naturally expect to solicit any business which may be made available for us if we are successful in this case.

Q. And if you are successful in this case, you hope, do you not, by reason of the fact that you would then have

a single line from Spokane to Chicago, to obtain some advantage that you do not now have over such railroads as the Northwestern and the Soo Line and the Burlington?

A. Well, I wouldn't say that. We might expect it, but it doesn't necessarily follow we would get those results.

Q. You certainly would try to get those results, would you not?

A. Well, naturally.

Q. You were the author, I believe, of a pamphlet distributed in Milwaukee called "The Spokane Gateway Case"?

A. That's right.

Q. Did you draft that?

A. Not all of that.

Q. You approved it all?

A. That's right.

Q. I see on the second page the statement of fact, "The Milwaukee Road is an important transcontinental line and [fol. 81] the only railroad operating between Puget Sound and Chicago upon it own rails." What is the significance of that statement? We will assume it is a true statement, but why did you put that in the pamphlet?

Mr. Maguire: I object to any cross examination upon the contents of a pamphlet concerning which the witness did not testify on direct. That is entirely improper cross examination.

Mr. Rockwood: This all goes to the statements that the witness made with respect to what the Milwaukee was going to do under the allegations of paragraph 11 of their Complaint.

Mr. Maguire: Counsel, by doing that, is just getting his foot in the door to rehash all statements.

Exam. Dishman: Objection sustained. He didn't testify on it on direct examination.

By Mr. Rockwood:

Q. But the fact is, is it not, Mr. Draver, if you should get this through route so that you could handle it on your own rails all the way from Spokane to Chicago, you would

expect to have an advantage over other western trunk line carriers that you do not now have?

A. I think I answered that question, didn't I?

Q. I don't remember.

A. I think I did.

Q. You would have a talking point, would you not, that you do not now have in the solicitation of traffic?

A. I believe so.

Mr. Rockwood: I have nothing further.

[fol. 82] By Mr. Golden:

Q. Mr. Draver, is it a fact that your own rails extend to Puget Sound?

A. Yes.

Q. Your own rails?

A. Yes.

Q. What is the most westerly terminus?

A. Tacoma. That's on Puget Sound, isn't it? That was my impression. I am not a westerner.

Q. Mr. Draver, if the Commission were to grant the relief which is demanded in your Complaint and incorporated in the substance of paragraph 11, would the solicitors which you would have in the SP&S territory solicit traffic over the SP&S to Spokane over your line to the Twin Cities, thence over the Northwestern, Omaha, CB&Q, Soo Line, Rock Island, Illinois Central, M&St. L?

A. I don't believe you are very realistic when you ask that question.

Q. I believe the question can be answered "yes" or "no".

A. The lines you mentioned east of Minnesota Transfer are all represented by salesmen.

Q. I realize that, but I ask you, would your solicitors solicit traffic to those lines east of the Twin Cities?

A. We would solicit for ourselves first. We would interpose no objection, however, to a route contemplating the use of one of the lines you mentioned.

Q. Westbound, on traffic that might move from, say, [fol. 83] east of Chicago, for example, from Chicago westbound to SP&S points, you likewise would not solicit

traffic over these lines which I have mentioned to the points—

A. We would continue our present practice which is to get the longest possible haul we can. It would be no different under conditions which might exist later on.

Mr. Golden: I have no further questions.

Redirect examination.

By Mr. Maguire:

Q. Mr. Draver, what has been the practice so far as movement of traffic is concerned which may originate on the Milwaukee on Puget Sound to be delivered somewhere east of Minnesota Transfer? Do we interchange and interchange in substantial quantities with western trunk lines at Minnesota Transfer?

A. We certainly do. We have routes with all the lines this gentleman mentioned.

Q. Does a substantial amount of traffic move over those routes?

A. Very substantial.

Q. Where we originate the traffic and could carry it through, possibly, to destination ourselves?

A. Too much of it.

Q. And westbound, is it the same situation?

A. That's correct.

Q. That they will originate traffic and turn it to us at Minnesota Transfer where it would be physically possible for us to perform the same haul?

[fol. 84] A. Yes, sir.

Mr. Maguire: That's all.

Recross examination.

By Mr. Rockwood:

Q. On traffic from Puget Sound originating on the Milwaukee destined to Chicago and points east thereof, what percentage of your total traffic which you originate is

delivered to you at Chicago and what percentage of it is delivered to some carrier at some intermediate points?

A. You are talking about traffic originating on Puget Sound which may be delivered to us at Chicago?

Q. No.

A. That's what I thought you said.

Q. Which is to be delivered at Chicago or some station beyond.

A. I misunderstood. I couldn't tell you. I haven't any idea.

Q. On the great majority of your traffic, you retain the long haul—

Mr. Maguire: The witness said he hasn't any idea. Is that a statement or a question?

Mr. Rockwood: Will you be quiet, Mr. Maguire? The witness used extravagant terms "too much" and all such in describing how generous they were with other western trunk line carriers.

Exam. Dishman: What was the question?

Mr. Rockwood: I am asking what percentage of the traffic they originate on the Puget Sound area, the west, destined to Chicago and points east is handled by them all [Vol. 85] the way to Chicago and how much of it is delivered to some intermediate carrier such as the Northwestern or the Burlington or one of the other western trunk line carriers.

Exam. Dishman: Does the witness know?

The Witness: No, I do not.

Mr. Rockwood: That's all.

By Exam. Dishman:

Q. On the exhibit, Mr. Draver, you show hoppers except 1. o. For the benefit of the record, will you tell us what 1. o. means?

A. Well, the hoppers except 1. o. would be the ordinary hoppers with open top cars.

Q. I just wondered what the 1. o. stands for.

A. I don't know. That's a mechanical designation. I couldn't tell you.

Exam. Dishman: Did you offer that exhibit in evidence?
Mr. Maguire: I would like to, yes.
Exam. Dishman: Without objection, it will be received in evidence.

(Complainant's Exhibit No. 2, Witness Draver, was received in evidence.)

Exam. Dishman: The witness is excused.

(Witness excused.)

Exam. Dishman: We will now recess for lunch until 2:00 p. m.

(Whereupon, at 12:30 p. m., a recess was taken until 2:00 p. m. of the same day.)

[fol. 86] AFTERNOON SESSION 2:00 p. m.

Exam. Dishman: The hearing will come to order.
Mr. Maguire: Call Mr. Engel.

H. O. ENGEL was sworn and testified as follows:

Direct examination.

By Mr. Maguire:

Q. Your name is H. O. Engel?
A. Yes, sir.
Q. You have already been sworn, have you not?
A. Yes, sir.
Q. And your experience, present position and qualifications, is set forth, is it not, on page 1 of the prepared statement, copies of which have been distributed to all of the parties?
A. Yes, sir.

Exam. Dishman: The documents handed the Examiner will be marked Complainant's Exhibits Nos. 3 through 15, inclusive, for identification.

(Complainant's Exhibits Nos. 3 through 15, inclusive, Witness Engel, were marked for identification.)

By Mr. Maguire:

Q. And will you proceed with that statement which you are prepared to offer at this time?

A. I need not read this introductory—

Q. You can read that, yes.

A. My name is H. O. Engel, and I live in Seattle, Washington. I am Assistant General Freight Agent of the Chi-
[fol. 87] cago, Milwaukee, St. Paul and Pacific Railroad Company, which I shall hereafter refer to as the Milwaukee, and my business address is 660 Stuart Building, Seattle 1, Washington. My experience in freight traffic work consists of about forty years employment in the headquarters office of the Traffic Department in Seattle. I have held various clerical positions, including nine years as Chief Clerk in the General Freight Department, and was appointed to my present position October 1, 1950. During much of this time, it has been my duty to compile and introduce exhibits in formal and informal proceedings before the Interstate Commerce Commission and State regulatory bodies.

I should like to explain that I have inserted a subject heading for each of the several sections of my prepared testimony in the interest of coordinating with the exhibits. Beginning on page 3, these headings are quite similar to the caption of the particular exhibit referred to and as they will help to identify, I shall read them as I go along with the text.

I should also like to state that there are some occasional exceptions to the general rules and applications which I am describing, but they are of little import in connection with the issues in this proceeding. I have also made some insertions for clarification which I shall read into the record as I go along. In other words, this prepared statement is not entirely complete but I shall fill it in as I go.

Historical—Rates, Trans-Continental: In order that a
[fol. 88] full understanding may be had of our position and what we are seeking, I believe it would first be well to recite briefly the history and outline the rates as they exist today.

Effective September 10, 1913, single-factor joint through rates via Spokane were established on lumber and other forest products from shipping points on the SP&S Railway, O.E. Railway and O.T. Railway, which shall hereafter be referred to collectively as the SP&S, to local destination territory on the Milwaukee east of Mobridge, South Dakota, as more fully described in ensuing testimony and exhibits.

Application of rates via Spokane was and is, however, denied on other traffic and our participation in rates from and to the territory east of the Missouri River on other traffic remains the same as prior to construction of our line to the coast and entrance into Spokane; that is, we continue to be treated the same as other so-called Western Trunk Lines, such as the Chicago, Burlington & Quincy, Chicago & Northwestern, and others, being required to accept eastbound shipments and to yield westbound shipments at eastern gateways.

Such denial is contrary to the general concept of transcontinental rate making, which is to provide application at competitive rates from and to points on short lines in North Coast territory uniformly with all Trunk Lines, in which connection would cite the full line of rates maintained by the Pacific Coast Railroad, Spokane International Railway, and Washington, Idaho and Montana Rail- [fol. 89] way with the Milwaukee and other lines.

The only other exception to the general non-application of transcontinental rates via the Milwaukee-Spokane-SP&S is rates on transcontinental export and import traffic, moving at rates named in Agent W. J. Prueter's ICC Nos. 1553 and 1554 under the wide open routing applications of those tariffs.

Historical—Rates, West of Trans-Continental: With a few isolated exceptions, the SP&S has not voluntarily joined in any rates between points on its lines in Washington and Oregon and points on the Milwaukee in Montana, North and South Dakota (Mobridge, South Dakota and west thereof), and the only existing general line of rates are those on lumber and other forest products, from Vernonia, Oregon, and rates on livestock, both of which were ordered in by the Interstate Commerce Commission,

in formal proceedings, viz., in Docket 24364—Sub 1 (188 ICC 471), and Docket 17000, Part 9, Livestock—Western District (176 ICC 1), as more fully set forth in subsequent statements and accompanying exhibits, which I now wish to offer and have marked for identification.

By Mr. Maguire:

Q. Those exhibits have already been marked on the record, have they not?

A. Yes, sir.

Q. Go ahead.

A. Explanatory: Reference will be made in my testimony to groups of exhibits as a whole or to particular individual exhibits.

[fol. 90] Description and definition of the various terms and territories referred to in my testimony appear in Exhibit 3.

Tariffs Naming Single-Factor Joint Through Rates Via Spokane, Washington Between Stations on the SP&S and Stations on and Via the Milwaukee: Reference has just been made to existing joint rates between stations on the SP&S and stations on the Milwaukee and its connections east of Spokane applicable via Spokane, and Exhibit 4 contains specific reference to and a brief description of the territorial application of all of the tariffs naming such rates.

Routing in said tariffs in all cases reads simply: "SP&S Ry., Spokane, Washington-CMStP&P RR," and no other line appears in the transaction.

By Mr. Maguire:

Q. May I interrupt, Mr. Engel? Those are tariffs to which the SP&S Railway is a concurring party?

A. Yes, sir.

Q. Go ahead.

A. Although admittedly limited in scope, this section does show that through routes and joint rates have been established and are maintained via the Spokane interchange on all classes of traffic. They have been and are, however, moving a relatively small amount of traffic, the

total for calendar year 1952 being 387 cars, divided as follows:

162 cars of lumber and other forest products from SP&S shipping points to Milwaukee destinations named in Agent [fol. 91] W. J. Prueter's ICC Nos. 1474 and 1545, also Agent W. R. Watson's ICC No. 864.

Five cars of manufactures and miscellaneous from the east to Portland, Oregon under the Export Tariff, Agent W. J. Prueter's ICC 1553.

31 Cars of livestock from and to points on the Milwaukee under Agent W. R. Watson's ICC No. 829.

189 Cars gasoline and distillate fuel oil, from East Pasco, Washington, to Greenacres, Metaline Falls, Washington and Worley, Spirit Lake and St. Maries, Idaho, under rates named in Agent W. R. Watson's ICC 859.

There was no movement whatever under rates named in Agent W. J. Prueter's ICC 1554, Agent W. R. Watson's ICC Nos. 825, 829, 857, 862, and 880, or CMStP&P RR. ICC Nos. B-7194 and B-7728.

By Mr. Maguire:

Q. May I interrupt again, Mr. Engel? The tariffs which you have just named, are they, all of them, referred to in Exhibit No. 4?

A. They are all listed in there.

Q. And as to the volume of movement which you have just given, were those figures obtained from Mr. Nickel's Exhibit No. 1 as basic data?

A. Yes, sir, they were.

Q. Go ahead.

A. Attention is directed to the territorial application of the rates in all of these tariffs, which is generally confined [fol. 92] to points served exclusively by the Milwaukee. The gasoline and fuel oil rates from East Pasco, Washington apply wholly on movement to bulk storage plants located on Milwaukee trackage only, and the eastbound lumber rates apply with limited exceptions to local destinations. The export and import tariffs, Agent W. J. Prueter's ICC Nos. 1553 and 1554 carry what is commonly referred to as wide-open routing.

By Mr. Maguire:

Q. May I interrupt again there? The export and import tariffs to which you refer, do they cover pretty much all classes of traffic in commodities?

A. Yes, sir, they do, and by cross reference, I would say they cover everything and anything that would be moving for export or import.

Q. Go ahead.

A. I might also mention that the rates on livestock were prescribed on a continuous distance scale, which was strictly adhered to in publication of tariffs applicable between SP&S and Milwaukee points and results generally in charges several cents per 100 lbs. higher than the group rate basis maintained by the SP&S to the Public Livestock Market at Portland, Oregon from common and cross country points on the GN and NP east of Spokane, Washington, thus confining application of such rates for all practical purposes from or to country points reached only by the Milwaukee.

The class and commodity rates between Portland and [fol. 93] East Portland, Oregon, on the one hand, and stations on the Milwaukee in Washington and Idaho, Rathdrum to Metaline Falls, named in Agent W. R. Watson's ICC 862, also the cement rates from Metaline Falls, Washington to stations on the SP&S named in Agent W. R. Watson's ICC 825, actually antedate the Milwaukee construction to the coast, having been perpetuated after acquisition of the old Idaho and Washington Northern Railroad by the Milwaukee in 1914.

Tariffs Naming Rates From and To SP&S Stations Via Spokane, Washington, G.N. Ry. or N.P. Ry.: Exhibit 5 contains a list of tariffs in which rates are named between points on the SP&S and points on the GN Ry., NP Ry., or their connections, east of Spokane, Washington.

In contrast to the extremely limited application in connection with the Milwaukee as set forth in Exhibit 5, it will be seen the SP&S maintains a full line of rates on all classes of traffic from and to points on the GN and NP Railways and connecting lines east of Spokane, Washington, throughout the United States and Canada.

This list is merely illustrative and includes only such tariffs as name rates from or to points which may also be reached via Spokane by the Milwaukee and its connections.

There are, in addition, certain other tariffs which name rates from or to local points on the GN Ry. or NP Ry., and rates corresponding therewith should be provided from or [fol. 94] to local points on the Milwaukee. For example, the list does not include reference to Northern Pacific Railway Tariff No. 959-E, ICC No. 9760, naming rates on coal from Red Lodge, Montana to stations on the SP&S. Corresponding tariff of our issue, CMStP&P RR. ICC No. B-7688 names rates on coal from Roundup and Keene, Montana coal fields to Seattle, Washington and other points in Oregon, Washington and Idaho.

It is, of course, understood that we seek establishment of joint through rates from and to points served exclusively by the Milwaukee as well as points served in common with other lines, also points reached by connecting lines.

Trans-Continental—Routing East of Eastern Gateways: Reference is made in Exhibit 5 to various Trans-Continental Freight Bureau tariffs as of Agent W. J. Prueter, among others. These issues name rates on all classes of traffic between the Pacific Northwest and the entire United States lying east of the Missouri River and Rocky Mountains, also eastern Canada, applying on domestic and foreign commerce, eastbound and westbound, and include practically every railroad, Class I and smaller, as participating carriers therein.

On the whole, these transcontinental tariffs may be said to carry open routing east of certain gateways, located at or near the western border of the Eastern Defined Territories named in Agent Prueter's ICC 1548, such as Mobridge, South Dakota on the Milwaukee, Snowden, Montana on the Great Northern, and Beach, North Dakota on [fol. 95] the Northern Pacific. For example, on a westbound shipment, a Western Trunk Line railroad such as the CB&Q RR. or C&NW Ry., which connects with the Milwaukee, Great Northern, Northern Pacific and Soo Line at Minneapolis, Minnesota Transfer or St. Paul, Minnesota, does not restrict the routing of shipments through

to the Pacific Coast to any one or two of these northern transcontinental lines, but routing is open to all four of the lines reaching those eastern gateways. Similarly, on eastbound traffic, and still using Minneapolis, Minnesota Transfer and St. Paul, Minnesota, as typical eastern gateways, the CB&Q and C&NW, as typical Western Trunk Line railroads freely participate in single-factor joint through rates with all lines serving the Pacific Northwest.

In order that this situation may be better understood, would refer to transcontinental group map, marked Exhibit 6, showing the outline of points in Eastern Defined Territories as described in Agent W. J. Prueter's ICC 1548, from and to which various group rates published in the Trans-Continental Freight Bureau tariffs apply. Such rate groups apply in connection with both eastbound and westbound traffic.

Because of varying increases authorized in Ex Parte Nos. 162, 166 and 168, the territory in Groups D and E, also E1 in Northern Wisconsin has been split up. Such sub-divisions are, however, not shown in this map, as the western boundary lines of those groups remain substantially unchanged, and use thereof suffices for our purposes. [fol. 96] For purpose of clarification, would state Groups in the current Directory include, for example, Groups E2 and E5, which are not specifically outlined in this map.

The area bounded by black line and marked "North Coast Territory" in the northwestern part of the United States embraces among others, all stations on the SP&S.

With certain limited exceptions, rates between the area on and east of the western boundaries of those groups as identified by heavy yellow line running generally north and south from the Canadian border to the Gulf of Mexico on the map, on the one hand, and stations on the SP&S, on the other, apply only on traffic received from or delivered to connecting lines by the Great Northern Railway or Northern Pacific Railway at Minneapolis, Minnesota Transfer, St. Paul or Duluth, Minnesota, or Superior or Ashland, Wisconsin, on traffic moving via those lines through Snowden, Montana and Beach, North Dakota, respectively, such traffic being interchanged with the SP&S at Spokane or west thereof.

To illustrate, rates from or to east of the heavy yellow line do not apply via the NP Ry. through Beach, North Dakota to Edgeley, North Dakota, and the Milwaukee, nor via the GN Ry. through Snowden, Montana to Aberdeen, South Dakota and the Milwaukee.

From and to the territory in Groups F, G, E1 and H [fol. 97] between the heavy red lines, on the one hand, and stations on the SP&S on the other, rates via the GN Ry. via Snowden, Montana and via the NP Ry. via Beach, North Dakota are not limited to routing thence via Minneapolis, Minnesota Transfer, St. Paul or Duluth, Minnesota, or Superior or Ashland, Wiconsin, but are open to other junctions of the GN and NP Railways in Minnesota, Wisconsin, North Dakota and South Dakota.

While the foregoing deals with traffic moving under rates named in tariffs made subject to Agent Prueter's ICC No. 1548, or more commonly referred to as the class and commodity tariffs, substantially the same situation holds true with respect to the eastbound rates on lumber and related articles, except that there is no alternative routing via Dakota junctions on the Great Northern and Northern Pacific to eastern Nebraska, Kansas, Oklahoma and Texas generally. To clarify, there is inserted as Exhibit 7 a map showing the general outline of eastern territories of the United States taking common rates on lumber and related articles from north coast shipping points, as published in TCFB Tariffs 17-S, 18-P and 28-O, Agent W. J. Prueter's ICC Nos. 1511, 1474 and 1545, respectively.

To the great bulk of the territory, that is, the territory lying generally on and east of the heavy red line, rates are applicable from points on the SP&S via Spokane, Washington, GN Ry. or NP Ry., Minneapolis, Minnesota Transfer or St. Paul, Minnesota, thence connecting lines. This includes points on the Milwaukee east of Cologne and Miloma, Minnesota, Sanborn and Arion, Iowa.

[fol. 98] To the territory west thereof, lying between the heavy yellow and red lines, rates from SP&S shipping points apply via Spokane, Washington, GN Ry. or NP Ry. via their Dakota, Minnesota and Iowa junctions and connecting lines, except to points on the Milwaukee. There is,

however, no routing via GN or NP Dakota junctions to points outside this area and shipments moving into it, for example via the Great Northern to Sioux Falls, South Dakota or Sioux City, Iowa, or via the Northern Pacific-Oakes, N.D.-C&NW to points on that line, may not be reconsigned to Omaha, Nebraska, Kansas City, Missouri and points generally south and west thereof, whereas establishment of rates via the Milwaukee via Spokane would include application via the Milwaukee and its Missouri River Gateways to points generally south and west thereof.

Rates are also applicable from points on the SP&S via Spokane, Washington, GN Ry. or NP Ry., Duluth, Minnesota, or Superior, Wisconsin, thence connecting lines to the area within the gray border, also to eastern Canadian points under rates in TCFB Tariff No. 16-L, Agent W. J. Prueter's ICC No. 1541.

Application of Rates Between Points on the Union Pacific Railroad and Milwaukee and Connections: I should like at this point to digress briefly to mention that most of the tariffs listed in Exhibit 5 also name rates between stations on the Milwaukee and connections, on the one hand, and stations on the Union Pacific Railroad and its connec- [fol. 99] tions in Oregon and Washington. Offhand, it would seem that since the Milwaukee has rates from and to points on the Union Pacific and connections that it is in a fairly competitive position from and to SP&S territory, but this is only true to a relatively limited extent.

As a matter of general information and for the record, it should be stated that with the extension of the Milwaukee to the Pacific Coast in 1909 the OR&N Co. (now a part of the Union Pacific Railroad) which had previously joined the Great Northern and Northern Pacific Railways in rates via western junctions, also joined the Milwaukee in transcontinental rates via Plummer, Idaho on classes and commodities and lumber and other forest products from and to points on its lines, Portland, Oregon and east thereof.

Such transcontinental rates were, however, confined to the territory commonly referred to as north of the Chicago-Omaha line, including generally North and South

Dakota, Minnesota, northern Iowa and northern Illinois and generally north of the Ohio and Potomac Rivers, restricted to routing via across-Lake-routes north of Chicago, Illinois.

Rates were equal to those already in effect and maintained by the Union Pacific via its long haul routes through Council Bluffs, Iowa and while affording concrete recognition, at least in part, of the desirability in the public interest of utilizing additional services to be provided by the Milwaukee as a transcontinental carrier, the [fol. 100] rates thus made available were as stated confined to a limited tier of Midwestern and Eastern States, and after negotiations with the Union Pacific for expansion of these rates broke down in 1923, the Milwaukee instituted proceeding before the Interstate Commerce Commission in Docket 14167, CMStP&P vs. Union Pacific et al. (88 ICC 312) seeking establishment of through rates via Plummer, Idaho and Marengo, Washington, thence OWR&N Co. on westbound traffic from points on and south of the Chicago-Omaha line, and the Commission found that refusal of the Union Pacific to enter into such rates was unreasonable and ordered their establishment, which was accomplished effective August 10, 1924 in Supplement 15 to Agent R. H. Countiss' 1130 (TCFB Tariff 4-T) and other tariffs.

Similar application was extended to merchandise classes and commodities from and to points on the Southern Pacific in Oregon, and the Commission also required establishment of rates on lumber and other forest products from stations on the Southern Pacific in Oregon, including Salem and Eugene, which are also reached by the Oregon Electric Railway, to stations on the Milwaukee in North Dakota, South Dakota, Minnesota, Wisconsin and Michigan on complaint of the Willamette Valley Lumbermen's Association (51 ICC 250). Such application of lumber rates via Western junctions from Southern Pacific origins, also from shipping points on the Union Pacific was subsequently extended to points on the Milwaukee in Illinois, Iowa and Missouri, also from Southern Pacific origins [fol. 101] via across-Lake routes to points in Official Territory. I wish to make it clear, however, that these east-

bound lumber rates do not apply to points on connecting lines south of the Chicago-Omaha line, nor has there been any expansion of the eastbound rates on other classes of traffic to that territory via western junctions of the Union Pacific-Milwaukee, with the exception of the transcontinental export and import rates. Moreover, the Union Pacific does not permit milling or other transit privileges on lumber and related articles at stations on its line in connection with movements via Marengo, Washington and the Milwaukee, thus further and materially nullifying the practical application of existing rates with that line.

The Milwaukee is therefore with minor exceptions still without eastbound rates via western junctions from Portland, Oregon, Vancouver, Washington and other points on the Union Pacific or its connections to destinations generally in Nebraska, southern Iowa, southern Illinois and south thereof, also the entire area south of the Ohio and Potomac Rivers.

The rates to the area east of the Illinois-Indiana border and north of the Ohio and Potomac Rivers are restricted, as I have said, to across-Lake routes north of Chicago and are, therefore, of very limited practical application.

I should also like to point out in this connection that with the exception of Bend, Oregon branch line and Port- [fol. 102] land, Oregon and Vancouver, Washington, there are actually only a few points common to both the SP&S and Union Pacific. Those lines are on opposite banks of the Snake and Columbia Rivers for a distance of about 250 miles, and as a practical matter, much of the territory reached by the SP&S is served by it exclusively, and establishment of rates with the Milwaukee will not be a duplication of rates already available to the Milwaukee.

Western Gateway Routing To and From Points on the SP&S on Transcontinental Traffic: I have referred to the generally unrestricted routing east of Eastern Gateways on transcontinental traffic via which eastern lines, once having obtained their maximum haul on westbound traffic, invariably join western lines without preference via such maximum haul junction, and on eastbound traffic, freely join in through rates with all connecting transcontinental carriers.

Quite a different situation obtains, however, west of said eastern gateways with respect to the SP&S, specific routing being required from and to each station on that line, which restricts the movement of traffic to the intermediate hauls of the GN and NP Railways, that is, enforcing delivery of eastbound shipments to and accepting westbound shipments only from the GN and NP, to the exclusion of all others.

Detail of such existing routes over which competitive rates on transcontinental traffic apply from and to points on the SP&S is set forth in Exhibit 8. This exhibit lists [fol. 103] all of the stations on the SP&S in the geographical order appearing in Agent A. P. Leland's ICC No. A-33. Certain of such stations do not appear in Agent W. J. Prueter's ICC 1548, presumably because of unimportance from traffic standpoint or that one issue has not kept step with the other through inadvertence or for other reasons, but this does not alter the over-all picture.

Some variation in the keys to western gateways will be noted at individual stations within a certain block of stations, but this is also immaterial since the intermediate application of tariffs authorizes like rates as applicable from the next beyond point.

Attention is directed to official listing of Spokane, Washington as a station on the SP&S Railway, at Index 5 of Agent Leland's ICC A-33. This station is not shown in Agent Prueter's ICC 1548, and there is, therefore, no application of rates from or to Spokane, Washington via the SP&S as a line haul carrier, for the reason that both the GN and NP serve Spokane themselves, and there is no occasion for participation of the SP&S in rates on transcontinental traffic originating or terminating at Spokane. The Milwaukee does not seek establishment of joint rates from or to Spokane, Washington in connection with the SP&S as an origin or destination line, for like reasons, handling to and from industries on the SP&S at Spokane proper continuing to be performed in switching service as heretofore. [fol. 104] Explanation of these western gateways appear on pages 6 to 8, inclusive, following which is shown full explanation of reference marks and notes pages 8 to 13,

inclusive. These routes, also the following comment, refer to eastbound movement, but it should be understood the same junction points govern on westbound movements as well.

Routing from SP&S stations is generally via Spokane, Washington, thence GN Railway, or via Pasco or Spokane, Washington, thence NP Railway. The NP Railway thus maintains alternate junction routing from all SP&S stations, one of which short hauls the SP&S 146.2 miles, viz., from Pasco to Spokane, Washington.

There are, however, also other exceptions to such Spokane or Pasco routing, which further short-haul the SP&S, e.g.:

From
SP&S Railway

East Portland, Ore. SP&S, Portland, Ore., NP Ry., Spokane, Wash., SI-CPR-Soo

Gasco to Seaside, Ore. SP&S, Portland or Willbridge, Ore., Gn or NP

Mr. Rockwood: Excuse me. Do I understand Great Northern and Northern Pacific are terminating carriers at Seaside?

The Witness: From SP&S, Gasco to Seaside, rates apply via SP&S, Portland or Willbridge. In other words, they won't give the SP&S a haul to Spokane.

O. E. Railway

All stations (OE, Portland, Linnton or Willbridge, Ore, GN or NP

[fol. 105] (OE, Portland or Willbridge, Ore., GN, Bieber, Cal.
(WP, DRGW

Such routing deprives the SP&S of haul over the major part of its System Lines from Portland, Oregon to Spokane, Washington a distance of 378 miles.

Other noteworthy exceptions to Spokane routing are the routes from stations on the Oregon Electric Railway via Portland or Willbridge, Oregon, Great Northern Railway, Bieber, California, Western Pacific-Denver Rio Grande

Western and connections, applicable to eastern destinations generally, and the route from stations on the SP&S west of Portland to Seaside, Oregon, inclusive, via SP&S, Portland, Oregon, Union Pacific to stations on the Union Pacific Railroad in T. C. Groups G, I and J. By these routes the SP&S not only short hauls itself, but, with respect to a considerable expanse of transcontinental territory to which the Great Northern and Northern Pacific and their connections have access, departs from its usual policy of favoring these two companies, in that the SP&S entered into routes and rates, either excluding or short-hauling the Great Northern and Northern Pacific, into territory which could be served by the latter lines and their connections. Such routing is applicable on classes and commodities generally, including lumber and related articles.

The Milwaukee proposes that all traffic which it interchanges with the SP&S shall give the SP&S its maximum haul.

Lumber Rates From SP&S to Milwaukee Points: Refer- [fol. 106] ence was made in Exhibit 4 to single-factor joint through rates on lumber and related articles from SP&S shipping points to Milwaukee destinations via Spokane, Washington. It is felt such reference should be amplified and the relatively limited application of such rates clarified, and map marked Exhibit 9 is designed for that purpose.

It is a composite map consisting of the SP&S on the extreme left under caption of "SP&S System Lines Origin Territory" and the Milwaukee east of Spokane, Washington under caption of "CMStP&P RR Destination Territory."

The legends at the bottom of each section of the map explain briefly what the several colorings signify, but I should like to augment somewhat. It will be seen that the SP&S System Lines in the main are shaded in yellow, and, coupled with the yellow shadings of such of the CMStP&P line Mobridge, South Dakota and east thereof, as is also shaded in yellow, indicates that there are joint through rates via Spokane, Washington from and to such stations.

Mr. Rockwood: This exhibit entirely relates to lumber?

The Witness: This is just the lumber application. The section heading refers to that.

An important exception to this, however, appears in the case of the branch lines extending east from Albany, Oregon, which are colored in red, the legend indicating that there are no joint through rates from any stations on those [fol. 107] branches to destinations on the Milwaukee via Spokane, Washington.

This is not entirely correct since rates are published in Agent W. R. Watson's ICC 864 from stations on the Dollar and Foster, Oregon branches to Mobridge, South Dakota, and I should like at this time to request that second paragraph of legend below the SP&S part of the map be amended to read as follows:

"Red indicates origin territory from which no such rates are published via SP&S System Lines, Spokane, Washington, CMStP&P RR., except to Mobridge, South Dakota."

I might state in this connection that publication of rates to Mobridge, South Dakota was apparently made through inadvertence, there being no joint through rate published via Spokane to Glenham, South Dakota, the first point east of Mobridge, South Dakota, or points east thereof, named in Agent W. J. Prueter's ICC 1474, rates to which are held as maximum to Mobridge, South Dakota, from all other points on the SP&S.

By Mr. Maguire:

Q. Mr. Engel, could I interrupt you just a moment there? On the previous page of your prepared testimony, on page 16, you referred to stations on the Dollar and Foster, Oregon branches. In order to clarify the record, are those the two little lines which branch off the branch running southeasterly from Albany, Oregon, which is colored red, in the lefthand portion of your map?

A. Yes, sir. As I see the map, one little stub there is Foster, on the end of it, and Dollar at the very extreme end [fol. 108] of it. That's what I refer to. It's the so-called Sweet Home Line.

Q. And Santiam Branch?

A. Santiam Branch, yes.

Another exception to the yellow shading is Vernonia, Oregon, on the Keasey, Oregon branch, west of Linnton,

Oregon, which is shaded in green and matches like shading along the Milwaukee, Missoula, Montana to Mobridge, South Dakota, including Branch lines; also stations on the WSS&YP Railway, thus indicating joint through rates from Vernonia to such stations via Spokane, Washington, in addition to application to east of Mobridge, South Dakota. The rates from Vernonia, Oregon to Milwaukee stations, Mobridge, South Dakota and west were as indicated in Exhibit 4, published in compliance with order of the Interstate Commerce Commission in Docket 24364, dated October 19, 1932. They are the one exception to a complete lack of rates on lumber via Spokane, Washington from stations on the SP&S to Milwaukee stations west of the Missouri River. I might add that Agent W. R. Watson's ICC 864 is actually silent as to routing in connecting with these particular rates, the SP&S having withdrawn concurrence previously given to publication of routing via Spokane. In absence of specific tariff routing, it is our interpretation that rates are properly applicable via SP&S-Spokane-Milwaukee, therefore included in exhibit.

Important exceptions are also indicated to the application of rates from SP&S stations to Milwaukee stations [fol. 109] east of Mobridge, South Dakota, denoted by red and brown shadings through various station names. Joint rates are available to Minneapolis, St. Paul, Minnesota, Milwaukee, Wisconsin, Council Bluffs, Iowa, and other points shaded in brown, only by virtue of intermediate application of rate to a point beyond. However, no single-factor through rate via Spokane is specifically published, or authorized by invoking the intermediate application rule of tariff, to such points as Chicago, Illinois, Terre Haute, Indiana, Des Moines, Iowa, Menominee, Michigan, Duluth, Minnesota, or Superior, Wisconsin, or other points on the Milwaukee shaded in red. Moreover, there are no single-factor joint through rates whatever via Spokane, Washington, Milwaukee to destinations on the Milwaukee's connections in this general area, nor east or south thereof.

Stated briefly and generally, there are with certain exceptions joint through rates on lumber from SP&S origins via Spokane, Washington and the Milwaukee to points served exclusively by the Milwaukee east of Mobridge,

South Dakota, but not to Chicago, Illinois and numerous other large cities in the Midwest served by the Milwaukee, nor to points in the territory south and east thereof reached by lines connecting with the Milwaukee Road.

The territory reached via Spokane, Washington is therefore relatively small in comparison with the remainder of the United States east and south thereof which is not [fol. 110] reached at single-factor joint through rates via Spokane, Washington. This situation largely nullifies the practicality of such rates as the Milwaukee does have via Spokane, for the reason that a lumber shipper must look to the eventuality of diversion at competitive rates to points beyond the original billed destination which is denied him in the case of routing from SP&S shipping points via Spokane and the Milwaukee. It also tends to act as a deterrent to the establishment of plants for the milling or manufacturing of lumber at points on the Milwaukee, particularly west of Mobridge, as any such venture would require as complete sources of raw materials and joint through rates from origin to ultimate destinations on the outbound products as those engaged in similar businesses on other lines.

Comparison of Distances Via Milwaukee Routes with Existing Routes: In Exhibit 10 comparisons are made of mileages via selected competing routes with those which obtain under routing via the Milwaukee via Spokane, Washington, together with per cent of circuity of one to the other. Joint through rates apply over routes that include the GN Railway or NP Railway. Higher combination rates apply via Spokane, Washington and the Milwaukee.

In the three columns at the right side of each page, the shortest route is indicated by a dash (—) and the percentages of circuity via the longer routes are shown in the respective adjoining columns.

[fol. 111] We have confined these comparisons to existing routes via the SP&S-Spokane-GN or NP, but as shown in my discussion of Exhibit 8, rates also apply via the SP&S, Portland, Linnton or Willbridge, Oregon, thence GN or NP, from large segments of the SP&S, and I should like to point out that distances via those junctions would be substantially greater than via the SP&S, Spokane-GN or NP,

e.g., the distance from Astoria, Oregon via SP&S, Portland Oregon, GN to Minneapolis, Minnesota is 2,038 miles and via the SP&S, Portland, Oregon, NP to Minneapolis, Minnesota is 2,117 miles. This compares with distances from Astoria, Oregon to Minneapolis, Minnesota of 1,893, 1,953, and 1,927 via the GN, NP and Milwaukee, respectively, as shown on page 3 of Exhibit 10, and reflect circuities of 8 and 11 per cent respectively.

In presenting these comparisons, we have used the more important points, as well as termini of branch lines, on the SP&S, on the one hand, and the large commercial centers throughout the eastern part of the United States on the other, as representative.

The routes as explained on pages 5 to 8, inclusive, are not necessarily the short tariff routes, but do, in my opinion, afford a like-for-like comparison and a good cross-section of routes and competitive distances via the three northern transcontinental lines to all parts of the United States.

An analysis of distances from Portland, Oregon, as representative of SP&S points to Minneapolis, Minnesota, [fol. 112] and east thereof, including Milwaukee, Wisconsin, Chicago, Illinois, St. Louis, Missouri, Detroit, Michigan, etc., over the restricted long-haul routes of the Milwaukee, ranging from 1,836 miles to Minneapolis, Minnesota to 3,372 miles to Jacksonville, Florida, shows that routes via Spokane and the Milwaukee are longer by but one or two per cent than the shorter of the SP&S-Spokane-GN or NP route. Moreover, the Milwaukee route is in no case the longest of the three routes.

By Mr. Maguire:

Q. Could I interrupt, Mr. Engel? So far as the relationship of the Milwaukee distance to the longer, I mean, to the shorter of the other two routes, would this same remark apply to all of the points shown on the exhibit, your Exhibit No. 10, as well as to those which you have specifically named? In other words, is your circuity, percentage of circuity via the Milwaukee, in any case, exceeding two per cent circuity?

A. No, sir. That is correct.

Q. In any case, you examined the exhibit here, is it longer and the longer of the other two routes?

A. It is shorter in every case than one or the other of the other routes.

Q. And that same remark would apply to all the points as well as to those you mentioned particularly?

A. Yes.

Q. Go ahead.

A. To Aberdeen, South Dakota and points south and [fol. 113] west thereof in Iowa, Missouri, Oklahoma and Texas, the distances over the restricted long-haul routes of the Milwaukee, ranging from 1,551 miles from Portland, Oregon to Aberdeen, South Dakota, to 2,674 miles to Fort Worth, Texas, are shorter than via either the GN or NP routes by 1 to 7 per cent. The distances to Montana points via the Milwaukee are approximately the same as via the GN or NP, and on the whole, it may reasonably be said that distances via the route of the Milwaukee via Spokane compare very favorably in all cases with the routes of the GN and NP.

Summarizing, would point out that of the 168 examples given, the distances via the Milwaukee are shortest in 88 cases, and of the remainder, the percentage of circuity via the Milwaukee is only one or two per cent.

Statements Showing Rates on Representative Movements from and to Points on the SP&S: Exhibit 11 comprises statements of representative rates, mileages and routes on various commodities between points on the SP&S and representative points in the United States east of Spokane, Washington. This exhibit is divided into three sections, as follows:

Section 1: Eastbound rates on lumber and related articles.

Section 2: Eastbound rates on miscellaneous commodities.

Section 3: Westbound rates on miscellaneous commodities.

Lumber and related articles are important items of traffic between the involved territories and are dealt with more fully for that reason. In preparing this section of the ex-

[fol. 114] hibit, we took representative lumber shipping points on the SP&S and the representative destination points chosen throughout the United States were picked because of their geographical location to secure as complete coverage as possible and also because of their importance as commercial centers. Destinations are the same points for which comparison of distances via the GN Railway and the NP Railway versus the Milwaukee are given in Exhibit 10.

The rates shown via the routes embracing the GN Railway and NP Railway are in all cases single-factor joint through rates and the rates shown in the next to last column in each block of rates on pages 1 to 5, inclusive, are applicable via the Milwaukee from Spokane, Washington, and in the main are combination rates made over Spokane, Washington, as fully explained by reference marks on page 6. It will be seen that with the exception of certain Milwaukee destinations, rates via the Milwaukee beyond Spokane, Washington, are higher, and in many cases, substantially higher than via the GN Railway or NP Railway beyond Spokane, Washington.

The commodities shown in Sections 2 and 3 were selected from the larger actual movements from actual shipping points and representative actual destination points.

Rates via routes embracing the GN Railway and NP Railway are the going rates that have been developed over a long period and are required to move the traffic. Many of [fol. 115] these rates have been reviewed by the Commission and been held reasonable via existing tariff routes, including not only those embracing the GN Railway and NP Railway, but also numerous others involving shorter as well as longer hauls over which through rates are applicable.

Rates on miscellaneous commodities between Spokane, Washington and Transcontinental Territory vary only slightly, if at all, with through rates from or to points west thereof on the SP&S via the GN Railway and NP Railway. Therefore, when the local factor between Spokane and SP&S origins or destinations are added to the rates between Spokane and eastern points, in constructing rates via

Spokane and the Milwaukee, the resulting combination rates are naturally materially higher than the single-factor joint through rates via the GN Railway and NP Railway.

By Mr. Maguire:

Q. Mr. Engel, to clarify that last sentence that you read, are we to understand that the rates on these miscellaneous commodities between Transcontinental Territory, on the one hand, and Spokane and Puget Sound ports, for example, on the other, are at the same general level, are blanketed, so to speak?

A. Almost invariably they are the same rates. Because of water competition or other reasons, they are generally the same.

Q. I see. Go ahead.

A. Rather than show the tofal combination rates appli- [fol. 116] cable via the Milwaukee, we have in these two sections inserted in rate columns headed "Note B" only the factors west of Spokane, Washington, thus showing the actual amount that the rate via the Milwaukee exceeds rates applicable via the GN Railway and NP Railway from origin to destination.

With respect to the tariff routes, the underlying rule was to select a destination line providing short direct tariff routes including the GN Railway or NP Railway and to show comparison of through rates via those lines with combination rates applicable via corresponding routes via the Milwaukee via Spokane, together with mileages via all three routes.

The situation which these exhibits is intended to show is that the disparity in rates via the route of the Milwaukee versus the going competitive through rates via routes of the GN Railway and NP Railway is so great as to preclude any thought of shippers knowingly or willingly using the Milwaukee. In fact, any charge over the lowest going rate would result, and has resulted in precluding the Milwaukee from hauling such traffic via Spokane, Washington.

Since the distances via the Milwaukee as compared with the GN Railway and NP Railway routes are generally about the same, and in many instances shorter, the present combination rates are unreasonable per se and discrimina-

tory and prejudicial to the extent that they exceed the single-factor joint through rates applicable via the favored connections of the SP&S.

[fol. 117] Mr. Rockwood: Just a moment. I move to strike the statement of the witness beginning "Since the distances via the Milwaukee—" to the end, which he just read, being the last paragraph on page 23 of his prepared statement, as being a conclusion of law and endeavoring to usurp the function of the Interstate Commerce Commission.

Mr. Maguire: Mr. Examiner, this witness is giving his opinion as an expert, and I think that expression of opinion and conclusion is within the range and scope of an expert's testimony. The Commission may or may not regard it, but I don't think it should be stricken.

Exam. Dishman: It does not really add anything. It is up to the Commission to determine that. On that basis, that matter will be stricken. Proceed.

The Witness: Before leaving this exhibit, I should like to ask permission to have added to the tariff authorities in bottom right hand corner of page 6 of Section 1, reference to three more tariffs which were used in constructing combination rates shown.

Mr. Maguire: Maybe you had better read that slowly so the gentlemen may copy it.

The Witness: At the bottom of page 23, I am still talking about Exhibit 11 and I am also talking about, at the bottom of page 6 of the first section. You see, there are four tariff authorities listed therein, in the bottom right-hand corner. [fol. 118] I want to add three more.

Mr. Rockwood: Take them easy.

The Witness: Oregon Electric Railway Tariff 65-D, ICC F-166; Agent W. R. Watson's ICC 838; SP&S Railway Tariff 820-I, ICC-728.

I should also like to ask indulgence for corrections made in ink at several points which I trust need not be covered specifically by testimony. All copies of the exhibit have been similarly corrected.

West of Trans-Continental Territory on the Milwaukee: My testimony heretofore has dealt in the main with trans-continental traffic, that is, from, to and via the Milwaukee

Territory east of the Missouri River, as to which there are rates via Eastern Gateways only, and almost a total absence of joint rates via SP&S-Spokane-Milwaukee. I should now like to turn to the west of Trans-Continental Territory, that is, the territory Mobridge, South Dakota and west thereof, shown on map, marked Exhibit 12.

Here is a vast intermediate territory from and to which there are practically speaking, no joint through rates whatever from or to the territory served by the SP&S, despite the fact that raw materials and products of each are complementary one to the other in the over-all economy of this western territory.

This intermediate territory served by the Milwaukee is a large consumer of lumber and other forest products from the Pacific Northwest, and more particularly in recent years, it has been looking to the Pacific Coast for manufactured [fol. 119] goods such as furniture, aluminum products, iron and steel products, in fact, almost every kind of manufactured article that formerly was procured in the East. It is in turn a large producer of wheat and other grains, hay, livestock, wool and other agricultural products, also coal and other natural resources, consumed or desired for processing on the West Coast.

Much of this area is served exclusively by the Milwaukee and has been the origin and destination of varied and substantial amounts of freight traffic moving from and to points in Oregon and Washington. Although looking at the rate level only, the Milwaukee has a complete line of joint through rates with the Union Pacific via Marengo, Washington on traffic from and to Portland, Oregon proper, there is nevertheless, as previously pointed out, much local territory on the SP&S which does not have the benefit of single-factor through rates, and is subject to higher combination rates, despite entailing the same length of two-line haul as opposite points on the Union Pacific Railway. This disadvantage extends also with respect to points served by the SP&S, which are also reached by the Northern Pacific Railway, such as Pasco, Washington.

Traversing the extreme eastern part of Washington, the Panhandle of Idaho, the entire State of Montana and western sections of North and South Dakota, the Milwaukee

has 1,053 miles of main-line and 876 miles of branch lines between Spokane, Washington and Mobridge, South Dakota. In this area, it serves 315 local points. It is true that many [fol. 120] stations on the Milwaukee in Montana bear the same name as stations on the Northern Pacific Railway, but the two railroads are often separated by a river or are several land miles apart, and there being no physical connection which would permit of switching service to or from industries on either, such stations are for all practical purposes local to each line.

Exam. Dishman: We will now take a short recess.

(Short recess taken.)

Exam. Dishman: The hearing will come to order, please. Proceed, Mr. Maguire.

By Mr. Maguire:

Q. Will you resume, Mr. Engel?

A. Transit and Reconsignment: As shown by Exhibit 13, the Milwaukee offers a large number of transit privileges, including stops for partial loading or unloading, storage, grading, packing, sorting, consolidating, concentration, milling, fabrication, assembling and distributing of many commodities, and in the case of livestock, grazing, feeding, trying-the-market, etc. These privileges are of great value to shippers, receivers and distributors of freight. They are of substantial value in marketing operations and permit a freer flow of traffic through the transit points, but they may only be availed of when joint rates by way of the transit point are maintained.

The benefit to be derived by shippers from such privileges are too numerous to mention, but should like to direct attention to several practical situations where privileges [fol. 121] authorized by the Milwaukee would automatically become applicable at single-factor through rates and would be availed of in the public interest.

One such example is the case of sheep originating at Washtucna, Washington or some other local point on the SP&S which would be stopped for summer grazing in the extensive national forests adjacent to points on the Mil-

waukee's Elk River, Idaho branch line and ultimately finding market in South St. Paul, Minnesota, Chicago, Illinois or markets east thereof.

By Mr. Maguire:

Q. Mr. Engel, may I interrupt there? Are there also summer grazing areas adjacent to points on the main line of the Milwaukee in northern Idaho?

A. Yes, there are. The sheep had been unloaded at main line points as well as on the branch line. I just happened to have one in mind and used that branch line as representative, but it is true there are national forest and grazing lands along the main line as well.

Q. Continue.

A. Another example would be the case of a lumber mill at points on the Milwaukee, typical of which is the St. Maries Lumber Company, St. Maries, Idaho. That company is now unable to bid on competitive orders for part loads of lumber or other products manufactured by them to be added to cars originating on the SP&S—

Mr. Rockwood: Just a moment. I object to that testimony. [fol. 122] It has not been shown that this witness is qualified to speak as a market expert on what a mill can or cannot do to market its product.

By Mr. Maguire:

Q. Mr. Engel, are you familiar with the conditions confronting the St. Maries Lumber Company?

A. I know—

Mr. Rockwood: Just a moment. Answer whether you are or not.

The Witness: I am familiar with his rate disabilities.

Mr. Rockwood: You are familiar with the rates to and from St. Maries? I repeat the objection.

Mr. Maguire: That isn't what he said. He said he is familiar with the rate disabilities. You put a different slant on it than he did.

Exam. Dishman: Are you familiar with his marketing conditions?

The Witness: Yes, sir, to the extent he does not have rates where he needs them.

Mr. Rockwood: All you know about the problem of the St. Maries operator is what he told you recently, isn't that right, about where he wants to buy from and sell to?

The Witness: That, in addition to my knowledge of the extent of the rates through St. Maries, Idaho.

Mr. Rockwood: All you know about the problem is what he told you, is that right?

[fol. 123] The Witness: I know that, yes, sir.

Mr. Rockwood: I object to it as hearsay also.

Exam. Dishman: What portion?

Mr. Rockwood: All of this where he is talking about the company is now unable to bid and so forth. That's a conclusion based on hearsay.

Mr. Maguire: Well, now, Mr. Examiner, may I be heard on that? It is part of a railroad rate man's duties to familiarize himself with their problems, of industries on his line, and, of course, it may be that these are complaints that have been made and would, in a Court of law, be hearsay, but I think in the greater latitude allowed before an administrative body, that it is not such rank hearsay to be inadmissible.

Exam. Dishman: Did you make an investigation and come to the conclusions you stated here?

The Witness: I can't say more than that I have been told that by the president of the St. Maries Lumber Company, and also that I do know the limited application of rates through St. Maries which require combination rate applications.

Mr. Rockwood: May I inquire?

Mr. Maguire: Might I be heard further, please?

Exam. Dishman: Well, what I was going to say is that I think enough has been said about this, and it will be allowed to stand for what it is worth, and the Commission, in considering this testimony, will consider the objections raised [fol. 124] and the other remarks made about it.

Mr. Rockwood: May I still ask the witness one or two questions?

Exam. Dishman: All right.

Mr. Rockwood: Since this case has been started, Milwau-

kee traffic solicitors and representatives have travelled the territory extensively, have they not, talking with shippers?

The Witness: I know of some visits. I couldn't say extensively.

Mr. Rockwood: And one of the visits that was made in anticipation of this case was visit to the St. Maries Lumber Company?

The Witness: I don't know to my own information or knowledge that we called on the St. Maries Lumber Company.

Mr. Rockwood: Isn't it a fact that the statement on which you rely from the president of the St. Maries Lumber Company was a part of the program of solicitation by the Milwaukee for support in this case and not an independent complaint coming to the Milwaukee prior to the initiation of this case?

Mr. Maguire: That's a question, Mr. Examiner, which I submit is unfair to the witness because it states arbitrary alternatives, rather than giving the witness an opportunity to answer as to how the information was received.

Exam. Dishman: Well, the witness must know something about the situation. What do you know about it? How did [fol. 125] the information come to you?

Mr. Rockwood: And when?

The Witness: I am not a traffic representative, and such as he refers to, as having made extensive trips around the country, but I did meet Mr. Pugh, president of St. Maries Lumber Company here yesterday and we talked over his rate disabilities, and he has made it very clear that there are many—

Mr. Rockwood: Now— Well, go ahead.

The Witness: Made it clear to me there are many situations where he is handicapped by the non-application of rates through St. Maries, Idaho. He has told me that and cited cases of where he was unable to bid and transit lumber in his mill or wholesale lumber, which he engages in extensively, because of the lack of rates through St. Maries. That I have from him personally.

Mr. Rockwood: I add one further objection that this testimony of Mr. Pugh, when that appears, we will object on the grounds that it's material only as bearing on the

question of Section 3 (1) of the Interstate Commerce Act, and I will add my objection to testimony of this witness as to the rate disabilities of particular persons or localities as immaterial in this case and as bearing only on the question of violation of Section 3 (1) of the Act.

Exam. Dishman: What you have said will be considered as going to the weight given the evidence, so the witness may [fol. 126] proceed.

Mr. Rockwood: Mr. Examiner, I am in a very difficult position here. When evidence is received and the Examiner rules, as I have heard Examiners often rule, that will go to the weight and will be considered or not by the Commissioner, we will find ourselves in the position in which the Union Pacific found itself, where the Commission said they were right, Section 3 (1) couldn't be raised by a railroad, but the record is made and the evidence is in and we will consider it. We want to prevent the—

Exam. Dishman: Well, you have a continuing objection. Proceed.

By Mr. Maguire:

Q. Will you start at the first whole paragraph at the top of page 27?

A. I hadn't finished reading all of that.

Q. Finish reading the paragraph to which objection was made. I thought you completed that.

A. —except to an extremely limited destination territory; neither could they entertain offers to custom-mill or manufacture for their own account rough lumber originating at points on the SP&S and destined Chicago and east thereof.

A feed mill at Spokane—

Mr. Rockwood: I object to this testimony about the feed mill at Spokane on the same grounds.

By Mr. Maguire:

Q. Did you obtain the information regarding the feed [fol. 127] mill in the same manner that you obtained the information about the St. Maries Lumber Company?

A. I studied the application of rates with two separate

mills engaged in business in Spokane, that is, their traffic representatives, and I obtained the information the same way.

Mr. Rockwood: When?

The Witness: Oh, in the past two weeks, or within the past month, certainly.

Mr. Rockwood: In other words, they weren't complaining, but you went out and asked questions?

Mr. Maguire: That's a little propaganda that counsel is throwing in.

Mr. Rockwood: I am trying to determine the facts, not propaganda.

Mr. Maguire: I believe it does not require any further comment. It will be the same.

Exam. Dishman: It will be similar to the other proposition. Your objections are noted.

The Witness: Should I read the paragraph that I started?

Exam. Dishman: Yes.

The Witness: A feed mill at Spokane, Washington with customers or branches on the SP&S would be able to couple up credits representing movement of wheat or mill run from points on the Milwaukee in Montana with soybean meal from Minnesota, corn from Iowa, etc., and secure protection [fol. 128] of balance rates on the entire mixture, whereas under present restricted application, he must entirely forego use of Milwaukee tonnage to such destination or be subjected to payment of local rate from Spokane thus resulting in charges substantially higher than on wheat originating at common and cross-country points on the Great Northern or Northern Pacific in Montana.

Lack of joint through rates via the Milwaukee-Spokane-SP&S handicaps receivers of freight at points on the Milwaukee who would use transit privileges from or to points on the SP&S—

Mr. Rockwood: Same objection to this paragraph.

Exam. Dishman: All right, objection noted.

The Witness: —for example, absence of joint through rates prevents use of the milling-in-transit privilege at Harlowton, Montana, of wheat originating at Geraldine, Montana, or numerous other stations on the Milwaukee

when destined Pasco, Goldendale, Washington, Astoria, Oregon and numerous other local points on the SP&S.

It has become a common practice to partially unload manufactured articles from the East to Pacific Coast at two or three intermediate points en route. As previously testified, there are many points in the intermediate territory served exclusively by the Milwaukee between Mobridge, South Dakota and the western boundaries of Trans-Continental Eastern Defined Territorial Groups E-2 and E-5, which are precluded from use of transit privileges account being by-[fol. 129] passed under the present restricted application of rates via the Great Northern and Northern Pacific from and to territory east thereof. These are potential stop points, but if stop were availed of on movement from or to SP&S destination, higher combination rates which are prohibitive in comparison with single-factor through rates over other routes would be applicable.

By Mr. Maguire:

Q. Mr. Engel, may I interrupt you a moment with regard to Montana points, in particular? Do we serve points in Montana which are common to our line and to only one or the other of the two lines, Northern Pacific and Great Northern?

A. Yes, there are situations of that kind.

Q. For example, Great Falls, Montana is served by what companies, common points of what companies?

A. Milwaukee and Great Northern Railway.

Q. Is Great Falls, under our tariffs, designated as an intermediate point for the purpose of stops in transit?

A. Yes, it is.

Q. And how about Missoula, Montana?

A. It is a direct intermediate main line point and served by the Milwaukee and Northern Pacific both.

Q. And under our tariffs, could stops in transit be allowed on a shipment moving through beyond Missoula, we'll say, at both Great Falls and Missoula?

A. Yes, that frequently happens, too.

[fol. 130] Q. And can you name other examples of points which are common with the two, one of which is common

with the Great Northern and one of which is common with the Northern Pacific?

A. Another example would be Lewistown, Montana and Bozeman, Montana. Lewistown is served by the Great Northern and Milwaukee, and Bozeman is served by the Milwaukee and the Northern Pacific. We could combine Lewistown with Bozeman or we could combine Great Falls with Bozeman or Missoula, and no others, either the Great Northern or Northern Pacific, could do that. We could do it and protect the through rate on transcontinental movements.

Q. I see. Resume the formal statement.

A. It is a quite common practice to change the Pacific Coast destination of westbound transcontinental shipments while en route, e.g., shipment is ordinarily initially consigned to Seattle, Washington, with stops at intermediate points on the Milwaukee, which would, if followed through, permit of protection of competitive rates to that destination; however, should it become necessary to also stop at a point on the SP&S or to change the destination to an SP&S point, shipment would necessarily be subjected to higher combination rate. For this reason, shippers avoid use of the Milwaukee on shipments to Seattle, Washington, in possible eventuality of need to divert to points on the SP&S not reached via the Milwaukee at single-factor through rates.

[fol. 131] Mr. Rockwood: Just a moment. Mr. Examiner, he is stating a lot of practices of shippers. Do you have specific examples of that you could cite?

The Witness: In this next paragraph, I was going to cite a very flagrant example.

Mr. Rockwood: You are going to cite one? You used the word "shippers". I object to these general statements of the practices of shippers.

Exam. Dishman: Could you change that? You mentioned one shipper.

The Witness: I had reference to the government.

Mr. Maguire: Mr. Examiner, if I might suggest this: It would seem to me that rather than that sentence being objectionable, that it is subject later to cross examination

as to the extent of the witness' knowledge as to the shippers involved, because this witness is in touch with complications that arise through rate applications, and these statements that he has made are statements of fact that he learns in the ordinary course of his business.

Exam. Dishman: You are making these statements, statements of fact that you know of your own knowledge?

The Witness: Through my experience and contacts.

Exam. Dishman: All right, proceed.

The Witness: A good example of this was the heavy movement of Government freight to the Seattle Port of [fol. 132] Embarkation for the Pacific Theater of World War II, and more recently for Korea, much of which could not be cleared in the normal course, necessitating diversion into the Government's large Holding and Reconsignment Depot at Pasco, Washington, from which it was later moved to North Coast ports of Portland, Seattle, etc., for trans-shipment overseas. As previously pointed out, the Milwaukee does participate in the transcontinental export rates named in Agent Prueter's ICC No. 1553 via Milwaukee-Spokane, Washington-SP&S, and single-factor through rates are applicable on direct movements to Portland or Astoria, Oregon, but in event shipment is stopped for storage at Pasco, Washington, shipper encounters the anomolous requirement of having to pay on the movement into Pasco, the combination of domestic rate factors on Spokane, Washington, which are considerably higher than either the single-factor domestic rate applicable via other lines to Pasco, or the export rate applicable on shipments moved directly through Pasco to Portland or Astoria, Oregon, via the Milwaukee, Spokane and the SP&S. Such situation effectively renders use of the Milwaukee-Spokane-SP&S route inoperative, particularly on Government traffic.

Pages 3 and 4 of Exhibit 13 shows various transit privileges offered at stations on the Milwaukee in South Dakota and Minnesota east of Mobridge and west of Twin Cities, etc., which are generally local points and dependent on this railroad for such services. As was mentioned in respect to westbound shipments that are stopped to [fol. 133] partially unload at points intermediate to Se-

attle, etc., similar conditions obtain on eastbound shipments, such as lumber, fresh fruits and vegetables, seeds and other commodities. These privileges are especially valuable at smaller stations where full carloads cannot be handled economically. In addition to stopping for partial unloading of the commodities specifically named on page 3 of Exhibit 13, the tariff provides for such privilege on all commodities generally.

Grazing and fattening of livestock is an important transit arrangement in the South Dakota, Minnesota area west of the Twin Cities and is a valuable privilege to western shippers permitting the application of through rates to ultimate market plus nominal transit charges instead of a higher combination of rates to and from the grazing or feeding points.

Westbound privileges provided in this territory which would be available to shippers if the Spokane route was open on equality of rates via the Milwaukee Road to SP&S territory are stopping to complete loading of dairy products and other transit privileges provided on those commodities. Transit of canned goods at Glencoe, Minnesota, a local station on the Milwaukee west of Minneapolis permits utilization of facilities available and with competitive rates to SP&S territory should extend markets for transit operation at Glencoe. In the opposite direction there is storage, mixing, rehandling or transfer in transit of fresh or green vegetables, including potatoes, onions [fol. 134] and garlic at intermediate points on shipments from Oregon and Washington to all stations to which transit point is intermediate.

Reconsigning or diversion of carload freight is permitted at points east of Mobridge, South Dakota as well as west thereof, as provided in CMStP&P RR ICC No. B-7731 (GFD 15800-K). This is an important privilege to shippers both westbound and eastbound in the local territory of CMStP&P RR as well as in competitive territory; but at present a car in transportation on the Milwaukee could not be diverted to a destination on the SP&S via Spokane, except at charges based on a combination of rates substantially higher than would apply via routes on the GN or NP. Consequently, a car originally billed to any point in the North Coast Territory via the Milwaukee,

if necessary for shipper to divert to an SP&S station would be subject to penalty charges. The same situation exists on eastbound shipments. It is customary for many shippers of lumber to start cars to certain destinations via various routes with the intention of reconsigning the shipment in transit to another destination, or reconsigning may be necessary because of refusal of car, cancelling of order, etc. While, as earlier explained, there are through rates on lumber and related articles via Spokane to various local points on the Milwaukee, a shipper that finds it necessary to divert a car to some destination beyond these local points is penalized by higher charges.

[fol. 135] By Mr. Maguire:

Q. Mr. Engel, may I interrupt a moment? With regard to this testimony in the past few minutes here regarding problems of shippers, I would like to ask you whether, as an officer of the rate department, or rate section of the traffic department of the Milwaukee Road, you have occasion to consult with or are consulted by officers and employees of the traffic department engaged in the solicitation of business as to the problems and the difficulties and the obstacles which lie in the way of their obtaining routing of shipments due to tariff provisions?

A. Yes, I do quite often—as a regular thing, as a matter of fact.

Q. And is your information upon these general propositions based upon these conferences which are periodically held or contacts which are periodically or frequently called?

A. Yes, sir.

Q. Go on to the next section, please.

A. The SP&S-GN and SP&S-NP Are Not Treated as Single Lines for Rate-Making Purposes:

Mr. Torinus: Are or are not?

The Witness: Are not treated as single lines for rate-making purposes.

Mr. Torinus: It says "are" here. Oh, I beg your pardon, I was reading the first line.

The Witness: I hope not.

[fol. 136] Mr. Maguire: No, you had it right.

Mr. Torinus: I was looking at the wrong place.

Mr. Rockwood: Just a moment. Before you start that, may I have a chance to glance through it to see if I want to object to it?

Exam. Dishman: Yes.

Mr. Rockwood: I will not object to the statement of this.

Exam. Dishman: All right, proceed.

The Witness: Neither the SP&S-GN nor SP&S-NP are treated as a single line in the voluntary establishment of joint rates, but on the contrary, increments are added to reflect two-line hauls, except where measure of rate is influenced by equalization of Columbia River terminals with Puget Sound terminals or other considerations.

The Interstate Commerce Commission has prescribed distance scales for application from, to and within North Coast territory in several cases, such as the Portland Class Rate Case (21 ICC 640), the 17000, Part 9 Livestock Case (176 ICC 1), and the Docket 17000, Part 8, Cottonseed, its products and related articles Case (188 ICC 605), under which the SP&S-GN and SP&S-NP rates are figured on a continuous mileage basis, but this is also true under such decisions as to other multiple-line hauls of Class 1 carriers in North Coast territory, and do not, therefore provide basis for any general statement that the SP&S is treated as a part of GN or NP for rate-making purposes.

[fol. 137] In this connection, it might be pointed out that the order in the Cottonseed Cake Case prescribes a formula for computation of rates which requires treatment of those lines which are under the same management and control as single lines, and in conformity therewith, certain of such groups of lines are shown in Note A of Item 2000, Page 62 of Agent W. J. Prueter's ICC 1557, including, for example, the CB&Q and its subsidiaries, Colorado and Southern Railway and the Fort Worth and Denver City Railway, but the SP&S-GN and SP&S-NP are both significantly absent from such list.

Treatment of the SP&S as a separate and individual line for rate-making purposes is clearly demonstrated by the application of single-line distance scales of rates in North Coast territory referred to in Exhibit 14. In the

application of none of these scales is the SP&S and GN or SP&S and NP combined and the rates for their combined hauls arrived at on a through distances basis, but on the contrary, in all cases, combination of locals of each line is the legally applicable charge.

Moreover, the SP&S and GN or SP&S and NP apply multiple-line haul scales for their joint services, where provided in lieu of combination rates, e.g., the higher rates for two-line hauls of sand and gravel between stations in Washington named on page 21 of Agent W. R. Watson's ICC 880 is applied between stations on the SP&S and GN or NP, in the same manner as applied between stations on the SP&S and the Milwaukee or other line. [fol. 138] Neither is there ever given any thought to treatment of the SP&S and GN or SP&S and NP Railways as single lines in the negotiation of division of joint rates with a third line, the SP&S in all cases being held to be entirely separate and entitled to treatment as an individual line in all respects.

In this connection, attention should also be directed to Article XI of Articles of Organization and Procedure-Western Traffic Association, approved by the Interstate Commerce Commission, under Section 5a of the Interstate Commerce Act, by order effective December 15, 1949.

Section 2 of said Article lists the membership of the North Pacific Coast Freight Bureau as including: Spokane, Portland and Seattle Railway Company, Oregon Electric Railway Company, Oregon Trunk Railway, as an individual member, separate and distinct from any relationship with any other line.

Section 4 of this article provides that the Executive Committee shall be composed of the following member lines: Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Great Northern Railway Company, Northern Pacific Railway Company, Southern Pacific Company, Spokane International Railroad Company, Spokane, Portland and Seattle Railway Company, Union Pacific Railroad Company.

The Spokane, Portland and Seattle Railway Company also is a member with full voting authority of the Freight Traffic Committee under Section 4 (d) of this article.

[fol. 139] Representatives of the SP&S sit at meetings of the Executive Committee and of the Freight Traffic Committee, and in any other special committee dealing with subjects in which that line is interested, in the same manner and with the same standing as any other member line, and so exercise this prerogative to the fullest possible extent.

Section 8 of Article XI provides as follows: "Each member of any committee shall have one (1) vote, except where two (2) or more carriers are under common management or control, such carriers will be considered as one (1) member."

The SP&S Railway Company, as I have stated, in all cases has a separate vote on its behalf and on behalf of its subsidiaries, the Oregon Trunk and Oregon Electric, and in all respects has the same voting power as the Milwaukee, Great Northern, Northern Pacific, Union Pacific, or any of the authorized voting members.

Routing From, To and Via Points on the Chicago, Burlington & Quincy Railroad: I have shown that with minor exceptions, the SP&S refuses the Milwaukee participation via Spokane, Washington at competitive rates on traffic from and to Transcontinental territory, confining entirely to routes embracing the Great Northern or Northern Pacific.

I have also referred to the fact that transcontinental traffic moving under rates named in tariffs made subject to Agent Prueter's ICC 1548 (Territorial Directory), as a general rule can move under open or almost unrestricted through routing east of certain gateways. One of the [fol. 140] major lines serving the territory immediately east of said eastern gateways is the CB&Q RR., which interchanges traffic at the Twin Cities with all of the northern transcontinental lines, viz., the Milwaukee, Great Northern, Northern Pacific and Soo-CPR. The CB&Q participates actively and whole-heartedly in the open routing policy east of eastern gateways on traffic from or to North Coast territory, including all points on the SP&S.

Exhibit 15 has been prepared to illustrate. We have selected for the purpose Spokane, Seattle, Washington and Portland, Oregon as representative rate points.

There is shown on page 1 of the exhibit all of the "Keys to Western Gateways" via which transcontinental rates apply from and to each of these points, and explanations thereof are shown on pages 2 to 4, inclusive. Some of these explanations are not entirely complete, unimportant detail and relatively limited applications not germane to the issues involved being omitted in the interest of brevity. Such omissions do not detract from, or alter the general application of rates as indicated.

The CB&Q does not appear directly in many of these western gateway routes, and we have shown immediately following each an explanation of the nature and extent of the CB&Q participation in the through routing thus authorized on transcontinental traffic, together with brief comment in connection therewith.

As previously stated, the application generally is that the CB&Q joins participating lines at its western termini [fol. 141] at every opportunity as either origin, destination or intermediate carrier. Among the routes so provided, particular attention is directed to Keys to Western Gateways 8, 8A, 10, 10N, 10-O, and 10-Y, applicable from and to Portland, Oregon, 3, 8M and 8N applicable from and to Seattle, Washington, and Nos. 3 and 8, applicable from and to Spokane, Washington, all of which couple up with the CB&Q and authorize joint rates on traffic from, to and via the CB&Q over through routes which are competitive with and entirely independent of any participation by any single line or group of lines.

The fact that the CB&Q negotiates and maintains traffic arrangements with connecting lines, freely concurring in joint rates with all connections without favoring any connecting line or group of lines above others, is a clear example of full and complete compliance with the provisions of Section 3 (4) of the Interstate Commerce Act.

I have one little addition I would like to read in here.

To summarize, large sections of territory served by the Milwaukee in eastern Washington, Idaho, Montana, North Dakota and South Dakota, are subjected to combination rates from and to points on the SP&S, and we propose that they be provided with single-factor through rates via Spokane, in line with those prevailing via other railroads.

We also propose that new competitive rates be provided to all points on the SP&S from the territory gener-
[fol. 142] ally east of the Missouri River via Spokane, thus enabling receivers on the SP&S to avail themselves of partial unloading and other transit privileges offered by the Milwaukee in the intermediate territory west of Eastern Gateways.

On eastbound traffic, the only rates from SP&S shipping points via Spokane and the Milwaukee are those on lumber and other forest products to local territory on the Milwaukee in the Midwest. As pointed out, the limited application of such rates which forecloses diversion and other transit privileges on shipments to points beyond largely nullifies use of these rates and we propose in lieu thereof that joint through rates and routing be provided via Spokane to all Eastern Territory on all classes of traffic, including lumber and related articles, thus affording shippers the opportunity to use an additional efficient transcontinental route not now open to them.

By Mr. Maguire:

Q. Does that finish your direct statement, Mr. Engel?
A. Yes.

Mr. Maguire: I understand, Mr. Examiner, from counsel, or from conference with counsel, that it will be to the convenience of both parties to defer Mr. Engel's cross examination until counsel have had a chance to examine or further examine his written statement and his exhibits. Mr. Engel will be in constant attendance upon the hearing during its entire course and will be available for cross examination at counsel's convenience.

[fol. 143] Mr. Rockwood: Yes, Mr. Examiner, this is a rather large bit of material that has been handed to us. I would like to look it over a little bit, and I think my associates would agree with me.

Exam. Dishman: Is your thought that cross examination will be completed before this hearing is finished here in Portland?

Mr. Rockwood: I certainly hope so.

Exam. Dishman: All right, witness excused temporarily.

Mr. Maguire: Our next witness will be Mr. Fred S. Holden.

FRED S. HOLDEN was sworn and testified as follows:

Direct examination.

By Mr. Maguire:

Q. Your name is Fred S. Holden?

A. Yes, sir.

Q. Where do you live, Mr. Holden?

A. 326 Oregon Way, Longview, Washington.

Q. And what is your business?

A. Well, I am employed by the Holden Lumber Company.

Q. And what is the nature of the activities of the Holden Lumber Company?

A. We manufacture fir lumber.

Q. Where is your mill, or where is or are your mill or mills located?

A. Our mill is located at Prescott, Oregon. That's about 45 miles down the stream from Portland on the Oregon side.

Q. On the SP&S?

[fol. 144] A. Yes.

Q. Where is it with reference to Longview, Washington where your office is?

A. It is just across the Longview bridge and four miles toward Portland.

Q. Now, would you describe the general manner in which you market the lumber produced at your Prescott mill?

Exam. Dishman: Before doing that, did you state what your position is?

The Witness: I sell the lumber.

Exam. Dishman: You are in the marketing of the lumber?

The Witness: Well, it's a small company.

Exam. Dishman: All right.

The Witness: At Prescott, Oregon, we make fir lumber into two inch thicknesses, make it all into two by four's, and

about eight or nine times a week we load a car with lumber in the lengths and sizes we think will appeal to the greatest number of people. In other words, we are strictly in the transit business. We load the cars up and start them off toward the east. We do nothing but transit lumber and we make nothing but lengths which we think are attractive. We have centralized our whole operation around just this way of doing things.

Q. And do you make many firm sales to purchasers in the east, or do you deal entirely through wholesalers and brokers?

A. Entirely through wholesalers and brokers.

[fol. 145] Q. Now, then, are you familiar with the proposal of the Milwaukee Railroad in this case?

A. Well, I have a pretty fair understanding of it.

Q. Would you state whether or not the proposed through rates via Spokane with the SP&S, between the SP&S and the Milwaukee would be a convenience to your company in the matter of marketing its products?

A. Well, yes, I believe it would.

Q. Will you state the reasons for your conclusions?

A. Well, I arrive at my conclusions somewhat analytically. I am not a railroad man. I am not an expert on the subject of rates, but this I know, that there are points on the Milwaukee which are fairly heavily populated as nearly as I have been able to learn. Now, the West Coast Lumbermen's Association, of which we are a member, puts out a bulletin monthly and annually, called "Industrial Facts" and in it, they seem to have on record the idea that roughly 65 per cent of the fir producers are in the State of Oregon, and five per cent here and there in the western states, and approximately 30 in the State of Washington.

Now, it seems to me, that inasmuch as these Oregon points don't make a through connection with the Milwaukee, if some of us, at least, could get through to the Milwaukee points, we could relieve the situation which, I believe, at least is there existing at present. I feel that it's fairly axiomatic in supply and demand, wherever there is a lessen-

[fol. 146] ing of supply and the demand remains constant, prices in that particular area will tend to inch up.

This has to be an opinion because the lumber market, as the Examiner may know, is a nebulous thing. It's up a dollar today and down $2.00 tomorrow. Things are hard to put the finger on. I can't say not having a through rate is costing us $600 or $6,000 a year, or any set figure, but it is my firm conviction there are points we can reach.

Exam. Dishman: How much lumber do you sell in the course of a year?

The Witness: Approximately $500,000 to $600,000 worth.

Exam. Dishman: Proceed.

By Mr. Maguire:

Q. Do you know of any development in the so-called Williston Basin in the Dakotas? Have you heard of that?

A. I have read of it.

Q. Have you made any investigation or received any information as to whether, by reason of the development of that area, there is an increasing use of lumber and also of this dimension lumber that you saw, two by four's?

A. Well, I know, Mr. Maguire, where there are centers of population, people are generally building houses. If they are landlocked, no ports to get at them, they seem to buy a lumber fairly light in weight, in other words, fir lumber.

Q. Are you able, except at a penalty, to get into Montana on the Milwaukee?

[fol. 147] A. No, we can't transit into a point— If I don't make a sale in Montana or make a sale in the Dakotas or east, wherever the invisible line is drawn, I have really had it! The combination takes effect and that car is just wiped out.

Q. In other words, do you have to have, then, some place to go in case you cannot dispose of your car on Milwaukee local territory?

A. That's correct.

Q. And is the nature of the lumber business such that you can or do make it a practice to send out cars over routes that might end you up in the pocket if you weren't able to make a sale along the particular route?

A. Just suicide to try, Mr. Maguire.

Exam. Dishman: For the benefit of the record, explain "pocket".

Mr. Maguire: By that, I mean a point on a line or a railroad from which you could not divert to any other connecting carriers of the railroad. That's what I mean by a pocket. Did you understand that meaning?

The Witness: That's correct.

By Mr. Maguire:

Q. And if you did start out a transit car, which is a car that you hope to sell in transit somewhere along the line, or divert if you can't sell it along any particular routes you have billed it on, if you sent it, under the present rate adjustment to points on the Milwaukee via Spokane and [fol. 148] the Milwaukee Railroad, from your experience, would that car be an attractive one for a wholesaler or broker to take hold of or handle—

A. Mr. Maguire, all of our cars are attractive.

Q. Yes. Would that be as attractive from the point of view of disposing of it?

A. You see, Mr. Maguire, houses are designed to use standard lengths all over the United States. A house being built in North Dakota is similar to New York or right here in this State. This lumber fits anywhere.

Q. Yes, but I think maybe you misunderstood my question. If you would start out a transit car, bill it via Spokane with the knowledge that it could not be diverted off the Milwaukee Railroad, would that car be as attractive for a speculative purchase by a wholesaler as a car which would be going over a route where there would be no restrictions? That is, no restrictions against diversion off that route?

A. No. A car limited strictly to the Milwaukee would not be a good car.

Exam. Dishman: Just one question here. Do you make shipments of lumber that are still not sold? You hope to sell it in transit?

The Witness: That's correct. Hardly any of our lumber is sold the day it leaves the mill.

Exam. Dishman: Where do you bill it to? Don't you [fol. 149] have a billing point?

The Witness: Yes, sir. We bill it out, just bill it out and start it out. We line up a string of railroads between here and New York. We cram as many railroads into that sequence as we can that is legal.

Exam. Dishman: No particular destination?

The Witness: No destination. Of course, the bill of lading will say, Buffalo, New York, under the protected one thirty rate, protected diversion privilege, partial unloading, and we have eight or nine railroads squeezed in there.

Exam. Dishman: What's your purpose, to sell before it reaches Buffalo?

The Witness: That's correct.

Exam. Dishman: But and if you don't sell it, it goes on?

The Witness: That's correct. They never do.

By Mr. Maguire:

Q. Is that a common practice in the merchandising of lumber?

A. That's correct.

Q. Well, then, I gather from your testimony that you believe that the proposed through rates would be desirable in your interest as a member of the public?

A. I believe so.

Q. Now, then, have you any comment to make upon the availability of cars or car shortages as applied to your mill at Prescott? Have you had any experience at that?

[fol. 150] A. I can't complain for this year, Mr. Examiner, and I can't complain for last year, but two years ago in the month of July and also August, as near as I remember, we had an extremely bad car shortage. Our requirements at that time were eight and nine cars a week and we were receiving two or three a week, sometimes less. Of course, I complained often and loudly, and I made a constant practice of riding down the street looking at the competitors and wheeling back to my office and complaining some more.

In the end, I had to put the lumber produced—we didn't slow up—put it on the trucks, take it over Longview bridge, paying toll, take it to the siding and put the lumber in Milwaukee or Union Pacific cars, and there was never any shortage in Longview. Now, this is where we got hurt. We

got hurt. It was very expensive, and we didn't like it. I have waited two years to get it off my mind.

Q. Do you feel better about it now?

A. Much. Much.

Q. And would it be desirable from your point of view to have an additional possible source of car supply?

A. Certainly. Certainly.

Q. To meet these periodic car shortages?

A. Certainly.

Cross examination.

By Mr. Rockwood:

Q. That period two or three years ago—

[fol. 151] A. Two.

Q. Was that a period of general car shortage in the area?

A. There wasn't a shortage in Longview.

Q. Did you hear of a shortage on the Southern Pacific about that time—

A. I paid no attention to anybody but ourselves.

Q. Wait a minute—which resulted in a complaint filed with the Interstate Commerce—

A. I know nothing of it.

Q. Please wait until I finish the question—which resulted in a complaint against the Southern Pacific to furnish cars?

A. I know nothing of it.

Q. Do you know anything about whether in that period the Milwaukee had car shortages in the Puget Sound area?

A. Nothing, nothing of that.

Q. All you know, the Union Pacific and Milwaukee at Longview were able to furnish you cars a little more readily than the SP&S at Prescott?

A. They were able to furnish cars—period.

Q. They furnish the cars you needed?

A. They did.

Q. You know nothing about the general conditions—

A. I know nothing about the general conditions.

Q. Please wait until I finish the question before you begin to speak. Do you manufacture grain doors?

[fol. 152] A. Yes.

Q. Do you sell them to the Milwaukee?

A. All the railroads except the Great Northern.

Q. Sell them to SP&S?

A. No.

Q. Do you sell them to Northern Pacific?

A. Yes. A great many.

Q. You sell to the Milwaukee?

A. Yes.

Q. Do you know anything about the situation with which, we'll say, a fir mill located in the Milwaukee Puget Sound area is faced in trying to market lumber in the Northern Pacific and Great Northern territory?

A. Nothing.

Q. You are not aware of the fact that the Milwaukee follows the same policy with respect to lumber originating on its line—

Mr. Maguire: Just a moment. I am going to object to that question right now. Now, Mr. Examiner, counsel has asked the witness a question as to whether he is familiar with a certain fact, and then he proceeds to testify, without being sworn, by asking that question all over again and stating the facts for the record.

Exam. Dishman: You stated you have no knowledge?

The Witness: That's right. I have no knowledge of it.

By Mr. Rockwood:

Q. You do not know whether or not it is a fact that [fol. 153] your competitor producing two by four's on local Milwaukee mills in the Puget Sound area is faced with exactly the same marketing condition when they try to sell in the Great Northern and Northern Pacific territory? Do you know?

Mr. Maguire: That's objected to.

Exam. Dishman: The witness has already answered and said he does not know.

Mr. Maguire: Of course, counsel's remarks will not be considered as evidence in the case. Maybe I am belaboring the point.

Mr. Rockwood: No more than your opening statement.

Mr. Maguire: Quite right.

By Mr. Rockwood:

Q. Where do you market your lumber now?

A. Oh, pretty heavily in the States of Indiana, Iowa, Illinois, Minnesota.

Q. How many cars did you ship into Iowa in 1953?

A. I couldn't say.

Q. As a matter of fact, you shipped three, didn't you?

A. Is that all?

Q. How many cars did you ship to—what was the other states you gave—Indiana?

A. Yes.

Q. How many cars did you ship to Indiana?

A. I have no idea how many.

Q. Zero.

[fol. 154] Mr. Maguire: Just a moment. Just a moment. Mr. Examiner, I do think counsel should be cautioned, where the witness says he does not know, there is no need of counsel's supplying a figure from some unknown, unvouched for source.

Exam. Dishman: Let the witness testify. Do you know how many shipments you made to any of these states?

The Witness: I didn't arrive with any statistics.

Exam. Dishman: You couldn't testify as to that?

The Witness: No. No.

Exam. Dishman: Well, I suppose that covers it.

By Mr. Rockwood:

Q. Do the majority of them go east of Chicago?

A. I would say yes.

Q. You talk about selling through brokers and wholesalers. Are they located in eastern points or are they brokers and wholesalers located in the Portland area?

A. I sell some to a man, Lloyd W. Wise, in New York City and I sell quite heavily to people here on the west coast.

Q. Lumber brokers located on the west coast?

A. You would call them a wholesaler, I believe.

Q. How many cars did you ship in the year 1952?

A. I don't know. In 1952?

Q. Excuse me, I meant 1953.

A. I don't remember.

Q. Was it 100 cars?

[fol. 155] A. I have no recollection.

Q. Or 1,000? Well, you know—

A. Well, I tell you, it's seasonal.

Q. Please let me finish the question. Was it as many as 1,000?

A. I don't think it could be.

Q. As many as 500?

A. Can I give you a simple explanation?

Q. Just answer that question. Was it as many as 500?

A. I will tell you a simple answer. Our business is seasonal.

Q. I am talking about the year 1953. Was it as many as 500?

A. I don't know.

Q. As many as 100?

A. I don't know. Possibly over 100. I can't pluck a figure out of the air.

Q. We have got a strike on now and you are not shipping, but how many cars did you ship last week?

A. Oh, I would say approximately seven or eight.

Q. Where did they go?

A. Where did they go? They went on consignment as usual.

Q. You don't know where they went? Through what broker did you sell those cars?

A. I sold—I don't remember exactly who. I think some of it went to Lloyd W. Wise in New York and Gray Lumber and Shingle got a couple.

Q. Where?

[fol. 156] A. Seattle.

Q. How are those cars billed out of here?

A. Show Gray Lumber and Shingle as the shipper.

Q. What's the destination?

A. Buffalo, New York.

Q. How are the Wise cars billed?

A. Same.

Q. To New York City?

A. That's a favorite—not to New York City, but to Buffalo, New York.

Q. And Mr. Wise, I take it, had a market for those cars in the east somewhere and hoped to get one?

A. I hope so.

Q. Yes. If those cars rolled Great Northern and Northern Pacific, would he have any trouble in diverting those cars to any point east of Chicago that he wanted to sell them?

A. East of Chicago he wouldn't have much trouble.

Q. You know these rates apply east of Chicago?

A. What rates?

Q. The rates through Minnesota Transfer apply to all points east—

A. The $1.30 rate, you mean into New York—I am not an expert on rates.

Q. You say you are not an expert on rates. Then you don't know?

A. I know—

[fol. 157] Mr. Maguire: He has answered the question. That is bullying the witness.

Exam. Dishman: You don't know what the rates are, $1.30 or what it is?

The Witness: I know it's $1.30 to Buffalo, New York.

Mr. Rockwood: I am not attempting to take advantage of the witness. I am trying to find out where his markets are and what difficulty he has in getting the product to the market.

By Mr. Rockwood:

Q. You had no difficulty in '53 in disposing of all the lumber you manufactured?

A. You never have difficulty in disposing of lumber. You can give it away.

Q. Did you have difficulty in 1953 in selling the lumber?

A. Yes, we had it very bad.

Q. Did you have to sell below the market of your competitors?

A. Hard to say. Like I said, the lumber market is very nebulous. You take every car and slug it out on $1.00 or $2.00 or a two-bits basis.

Q. Did you have any greater difficulty in disposing of

your lumber in any year than any other producers? Do you know?

A. For sure?

Q. Do you know?

A. To be absolutely certain—

Q. Do you know?

A. No.

[fol. 158] Q. You don't know?

A. I couldn't say that.

Q. You can't tell us to what extent the pressure would be off you and your sales if you got these rates the Milwaukee asks for here? Do you know?

A. I said earlier I don't know whether it would make a difference in the gross profit of $600 or $6000. I don't know the answer to that. I know if I can get into a place or if I can't get into it and if there is a potential customer.

Q. Isn't this a fact, you simply want everything opened up wide open to get wherever you want at a through rate?

A. Incommensurate with public interest, I do.

Q. Will you please tell us where it would not be in the public interest to open through routes?

A. If they give me a very small rate to Tallahassee, Florida or something like that.

Q. We are not talking about the measure of the rate, but of the existence of through rates. You, as a lumber operator, want to open everything wide open, don't you, to have through rates—

A. Yes.

Q. —to go anywhere in the United States and pay an equality rate? You are coming in and supporting the Milwaukee simply as part of what you consider desirable to open everything up?

A. That's correct.

Mr. Rockwood: That is all.

[fol. 159] Redirect examination.

By Mr. Maguire:

Q. Mr. Holden, Mr. Rockwood has asked you whether you have been hurt by the absence of these through rates

via the Milwaukee in the past. I will ask you whether it would be desirable to you as a member of the shipping public in the future to have these rates with the possible potential existing and future markets in the territory which you covered in your direct examination?

Mr. Rockwood: I will object to that. He has already testified on those subjects. That is improper redirect.

Mr. Maguire: The question, Mr. Examiner, relates directly to the question asked by Mr. Rockwood as to whether he had been hurt by the absence of these rates in the past.

Mr. Rockwood: I didn't ask him that.

Mr. Maguire: You very definitely asked him that.

Exam. Dishman: It seems to me the witness has covered this subject to the extent he had been. Is that your viewpoint?

The Witness: I think so.

Exam. Dishman: Is there anything more you can add?

The Witness: Well, nothing except I feel this business of starting lumber out without a purchaser has become more and more prevalent. I can't say to what degree it's being done. I feel it is overwhelming. Everybody I know indulges in it to a degree.

By Mr. Maguire:

Q. Let me ask you, however, on redirect about the dis- [fol. 160] position made by the wholesalers to whom you sell the car. While the wholesaler may be located in New York, do these wholesalers—we'll take a New York wholesaler, for example—does he operate and make sales within the middle west as well as east of Chicago?

A. It is very easy to make sales, Mr. Maguire, anywhere in the United States. What a wholesaler does, if he is much of a wholesaler at all, is, he sets up his teletype and puts a message on it, offer Holden cars, and adds his own name and lists lengths and how much he would like for it. The teletype operator sends this message to this list of lumber companies, and they all get it and they look at it and if it appeals to them, maybe they will make a counter offer. It goes on constantly. It's easy and cheap to call anywhere in the United States, and if a broker sells one or two cars

for a $75.00 profit, it will pay a lot of telephone and teletype bills.

Q. When a car leaves your mill billed to Buffalo, New York, does it necessarily imply that car is going to be sold either at Buffalo or any place east of Chicago?

A. Means nothing. It just means nothing at all.

Mr. Maguire: That's all, Mr. Holden.

Exam. Dishman: Witness excused.

(Witness excused.)

Mr. Maguire: Call Mr. L. R. Pugh.

[fol. 161] L. R. Pugh was sworn and testified as follows:

Direct examination.

By Mr. Maguire:

Q. Where do you live, Mr. Pugh?

A. St. Maries, Idaho.

Q. What is your occupation?

A. President of the St. Maries Lumber Company.

Q. How long have you been president of that company?

A. About 12 years.

Q. Will you describe briefly and generally the business of the St. Maries Lumber Company?

A. We are manufacturers and wholesalers of lumber only at St. Maries, Idaho, 63 miles east of Spokane on the Milwaukee Railroad.

Q. Is St. Maries served by any other railroad?

A. No, sir, I do not believe it is.

Q. Do you do any remanufacturing or finishing in transit at St. Maries as well?

A. Yes, stopping in transit to complete loading.

Q. Now, how do you dispose of your lumber? Do you sell it direct, or do you sell through wholesalers?

A. Well, we sell to industries and to wholesalers in the east, you might say.

Q. About how many cars of lumber did you ship through St. Maries, Idaho last year, or what is your average per year, how many cars?

[fol. 162] A. Around 1000 cars.

Q. And do you ship any additional cars which do not go through St. Maries?

A. Yes, we sell quite a few cars, wholesale direct cars.

Q. In other words, then, you must buy lumber and forest products in addition to what you manufacture at your own mill?

A. Yes, sir.

Q. And what is done with the lumber which you purchase and eventually ship out through your own mill at St. Maries? What do you do with it there when it comes in?

A. We mill it, or we sort it in transit or we complete loading the cars.

Q. Do you buy a substantial amount of lumber from west of the Cascade Mountains in the fir belt?

A. Well, several hundred cars a year.

Q. And what has been your observation as to the relative ease of getting supplies, of making purchases of lumber in the State of Washington and in the State of Oregon?

A. Well, today it's much easier to buy in Oregon.

Q. What is the reason for that?

A. Well, the industry has moved south. I think probably Oregon is the largest lumber state in the Union today.

Q. And is there a large amount of lumber, or are there a large number of mills or producers along the lines of the SP&S System in the State of Oregon?

[fol. 163] A. Yes, there are.

Q. Do you have any difficulties with regard to purchases of lumber from mills located on the SP&S so far as utilizing the privilege of sorting, milling and stopping in transit, refinishing in transit, and so forth, completing loading at your St. Maries mill? Do you have difficulties in that respect?

A. Yes, we do.

Q. And what is the cause of those difficulties, according to your analysis of it?

A. Well, there are no rates from SP&S, Oregon Electric or Oregon Trunk points through St. Maries east of Chicago. I don't believe there are any west of Mobridge and very restricted to the points between Mobridge and Chicago. We have to be very careful. When you buy a car at St. Maries,

I think probably four cars out of five are unable to be picked up because of the restrictions.

Mr. Rockwood: What do you mean by picked up? I don't understand that.

The Witness: Buy from a mill, if we find the car on the SP&S only.

By Mr. Maguire:

Q. And are there a large number of mills—I will call your attention, for example, to the so-called Sweet Home Branch or Santiam Branch, sometimes called the SP&S—are there a large number of mills there located at that branch which are served solely by the SP&S, Lebanon being [fol. 164] the only common point of the Southern Pacific—

Mr. Rockwood: Is that testimony?

Mr. Maguire: Anybody knows that.

Mr. Rockwood: Hardly.

The Witness: There are quite a few mills there.

By Mr. Maguire:

Q. Do you have any rates off the Sweet Home Branch or Santiam Branch to points—

A. I don't believe we do.

Mr. Maguire: Wouldn't you be willing to stipulate that Lebanon is the only point on the Sweet Home Branch served, or rather, not served exclusively by the SP&S?

Mr. Rockwood: No. As a matter of fact, I am not sure.

By Mr. Maguire:

Q. Now, then, do you dispose of, I think you said, of part of your output to wholesalers as well as making some firm sales of your own?

A. Yes.

Q. What difficulty do you have with regard to sales to wholesalers so far as complications over routing from SP&S points are concerned?

A. We are unable to sell most wholesalers if a car originates that way.

Q. And where there are questions of doubt, do you have a traffic manager of your own concern, or do the officers and other employees who handle your buying and selling also handle the routing of traffic?

[fol. 165] A. The sales manager handles the traffic.

Q. And do you know of occasions whether or not he has to telephone other railroads or telephone railroad offices to find out whether certain routing will apply on certain cars which are moving? Does that have to be done?

A. Yes, he has to call Spokane quite often to determine if a routing is good.

Q. And what effect does it have in dealing with the wholesalers? Does it, does the delay incident to calling Spokane and finding out whether the routing is good, does that have any effect on your sales at times?

A. Yes, it does.

Q. For what reason?

A. They can buy it elsewhere without any restrictions. They will buy it that way, and they are not willing to wait, in a good many cases, to wait and see if it's good. If some other car is available, they will take that.

Q. Now, then, let us refer to the territory adjacent to the Oregon Trunk Railway. What kind of timber and consequent lumber is produced on the Oregon Trunk, as a rule?

A. A great deal of pine lumber produced down there, some associated species. I imagine in excess of 50 per cent of it is pine.

Q. And if you could get rates and routes which would permit free distribution and also the free use of transit [fol. 166] at your St. Maries mill, such as storage, sorting or stop for complete loading, would you be interested in making purchases on the Oregon Trunk Railway?

A. Yes, we would.

Q. And are you familiar with— I think you were here when Mr. Engel was testifying today, were you not?

A. Yes, I was.

Q. And with reference to the restricted application of rates via the Union Pacific which also serves, runs its same line as the Oregon Trunk; as a matter of fact, by reason of those restrictions and the restrictions on the Oregon

Trunk routing, are you able to get into the Oregon Trunk territory consistently as a source of supply?

A. No, we are not.

Q. Would you be able to do so if the Oregon Trunk, SP&S established joint rates with the Milwaukee through Spokane, which would permit the stopping in transit which you already have on the Milwaukee tariffs and subsequent shipping on to territory east, south of Chicago?

A. Yes, we would.

Q. Now, then, has the limitation in the supply of lumber and the limitation of routes from some of your substantial sources of supply held down the amount of lumber which you can use in connection with transit privileges at your St. Maries mill?

A. Yes, it has.

[fol. 167] Q. About what per cent of the thousand cars which you ship out of St. Maries have been given some transit privileges under the Milwaukee tariffs?

A. About 10 per cent, possibly.

Q. Would it be desirable to you to increase the percentage of cars which are treated or otherwise handled in transit at your St. Maries mill?

A. Yes, it would.

Q. Would it facilitate the marketing of the lumber which you produce there as well?

A. Very much so.

Mr. Maguire: You may cross examine.

Cross examination.

By Mr. Rockwood:

Q. Where did you get this lumber that constitutes the 10 per cent which was handled in transit?

A. Washington, Oregon, Bingen White Salmon and once in awhile buy a car and haul it over the river and float it and we—

Q. How—

Mr. Maguire: Let him finish.

Mr. Rockwood: I thought he was finished. Go ahead.

The Witness: We buy it all over Oregon and Washington. We bought it in Bingen White Salmon, hauled it across to Hood River and loaded it on the Union Pacific to get transit on it.

By Mr. Rockwood:

Q. No difficulty getting transit on that car?

A. No, not from the Union Pacific.

[fol. 168] Q. The Union Pacific routes and rates are such that you are not bothered with this transit business, is that right?

A. At most points, yes.

Q. What are the restrictions on the Union Pacific rates off the Bend branch of the Union Pacific? What are the limitations?

A. I am not the traffic manager. I am not technical enough to tell you that.

Q. You don't know?

A. No, I don't.

Q. So when you answered the question that the things described by Mr. Engel made it difficult to market, you were talking about something you now say you know nothing about?

A. I know in general.

Q. You don't know what they are?

A. Not the tariff rate, no.

Q. Do you know what the restrictions are for movement off the Bend line of the Union Pacific?

A. Not exactly.

Q. Will you tell us, roughly, what they are?

A. I don't believe we have any routings off the Oregon Electric or the Oregon Trunk line.

Q. No, I say, off the Union Pacific Bend line.

A. Oh, I believe we do.

Q. You have routings off that?

A. Yes, sir.

[fol. 169] Q. What are the restrictions on the joint through rates via the Union Pacific? Do you know?

A. No, I don't. I don't believe there are any.

Q. You don't think there are any?

A. I don't believe so.

Q. Certainly none that bother you in marketing your lumber transited at St. Maries?

A. Not so far.

Q. Did you ever ask for rates from the Santiam Branch of the Oregon Electric to St. Maries? Did you ever make a request for those rates?

A. To whom?

Q. To anybody.

A. I didn't, no, sir.

Q. You have not, so far, been embarrassed by the lack of rates via the Milwaukee of any nature from the Santiam Branch? You have not been bothered—

A. We have been offered cars we had to turn down.

Q. If those rates were made applicable for the Santiam Branch, that would remove some of your difficulties?

A. I imagine it would.

Q. Are you familiar with the fact, initially it was the Milwaukee that declined to join in the rates off the Santiam Branch?

Mr. Maguire: That is an assumption.

Mr. Rockwood: If he is not familiar with it, he can say "no".

[fol. 170] Exam. Dishman: Do you understand the question?

The Witness: I don't know.

By Mr. Rockwood:

Q. Many of your competitors whose business is such that they can't hire full time traffic men have to call in to the railroad office for routings every day or so, don't they?

A. Occasionally.

Q. And in that respect, your operations are no different from the operations anywhere of any small operator, comparatively small operator—I don't call you small, but you say you are small enough so you don't have a full time traffic man—and that's a situation with which your competitors are faced all the way from St. Maries to the Pacific Coast and from Puget Sound to northern California, isn't that true?

A. Could be.

Q. Well, it is true, isn't it?

A. I don't know.

Q. So the fact that you have to call for a rate does not seriously embarrass you in marketing the lumber?

A. Costs us money.

Q. Long distance telephone calls?

A. Yes.

Q. Anything else?

A. Time.

Q. Except for that, it does not bother you at all, does it?

[fol. 171] A. Lose a car on it by waiting.

Q. Your competitors do similarly?

A. Possibly.

Q. And your competitors who are producing up in the Puget Sound area and faced with the same thing if they have to call up and they might lose a car occasionally?

A. They could.

Q. In that respect, you are no different than the operators on Puget Sound?

A. If they are on all three railroads.

Q. If they are, but you know, do you not, that there are many mills in the Puget Sound area out toward Grays Harbor located only on one railroad?

A. I imagine that's true.

Q. You know it?

A. Yes.

Q. Mills such as—I don't know if there are any, but maybe some up on the Olympic Peninsula served only by the Milwaukee?

A. Yes.

Q. You know some served only by the Milwaukee up north of Bellingham?

A. I think so.

Q. They would be up against the same thing you are, aren't they?

A. I imagine they would.

Q. Your competitive situation is no different from [fol. 172] theirs, is it?

A. I wouldn't know.

Q. Have you had any difficulty during the past year or

so in getting enough lumber to which you can transit to build up your transit credits so you can carry on your business without serious embarrassment?

A. No.

Q. Under the rate structure as it now is?

A. I don't know whether I understand you. Are you talking about rate credits or credits on transit?

Q. Maybe you know more about it than I do. You never had any serious difficulty in building up the necessary transit credits to take advantage of through rates eastbound, have you?

A. Oh, credits. I don't believe so.

Mr. Rockwood: That is all.

Redirect examination.

By Mr. Maguire:

Q. With regard to that last question, Mr. Pugh, I recall that you testified on direct that so far as your transit, lumber transit or shipments transited through your St. Maries mill were held down to 10 per cent of your business because of the difficulty, that's still a fact?

Mr. Rockwood: If that was his testimony, I object to your restating and resummarizing under the guise of redirect examination.

Mr. Maguire: It is simply a preliminary question.

[fol. 173] Mr. Rockwood: It's a leading question. I object

Exam. Dishman: Did you testify—

The Witness: Yes, he is talking about credits altogether different than the volume of lumber.

Mr. Maguire: Just what I wanted to bring out.

By Mr. Maguire:

Q. Now, then, by reason of your curtailment of your transit business through the Milwaukee which you have testified to, does that have any effect upon your not having any unused or unuseable transit credits for outbound business?

A. Yes.

Q. Now, then, also, these telephone calls that you are obliged to make, are or do those run primarily to the rate or whether the route will protect the competitive through rate?

A. Where or whether the route will work.

Q. And as a matter of fact, what Mr. Rockwood said about people in other localities in the lumber business being subjected to the same situation with regard to not having a traffic manager, is that more or less a chronic condition among the operators, except in the very large firms, that they are obliged to route their traffic by so-called foolproof, trouble-proof routes?

A. I imagine it would be.

Q. Now, then, do you have competitors over in your area of the state who are served by more than one railroad?

A. Yes.

[fol. 174] Q. Can you name any?

Mr. Rockwood: I object to that as being material only in connection with Section 3 (1). That is prejudice and preference between localities.

Mr. Maguire: Now, that subject was opened up in the cross examination of this witness, Mr. Examiner, because he was talking about his competitors being in the same fix he was.

Mr. Rockwood: I move to strike all of the testimony of this witness on the same grounds, direct and cross.

Exam. Dishman: Motion denied. The witness may answer, if he knows.

The Witness: What was the question?

(Question read.)

The Witness: Yes, we do. We have several in Coeur d'Alene within a 50-mile area.

Exam. Dishman: Is that in Idaho?

The Witness: Yes.

By Mr. Maguire:

Q. That is served by what carriers?

A. Northern Pacific and Great Northern, SI and the Milwaukee.

Q. I thought I could catch some reference in your cross examination over counsel's voice here about having bought some lumber at Bingen White Salmon, Washington which you had to truck over to Hood River, which is across the river, in order to ship it out. Would you tell us more about that? Why did you truck it over to Hood River for shipment out by the Union Pacific?

[fol. 175] A. We had no rates from White Salmon or Bingen through St. Maries so the lumber was already on trucks coming down from some nearby point and they hauled it across and loaded it on the Union Pacific.

Q. Bingen is a local point on the SP&S, is it not?

A. SP&S, yes.

Q. Now, then, have you, by reason of the non-availability of routes via the SP&S or its subsidiaries, had lumber truck hauled in order to get it on to a route where you would have more open routing or more through rates than you would enjoy via the SP&S?

A. To a limited extent.

Q. Now, you stated that you were not a rate expert, and I think I have covered that—

Mr. Rockwood: You did.

By Mr. Maguire:

Q. In the lumber business, do you have shifts in markets, that is, as to firm or weak markets in the consuming territory of the country?

A. Yes, we do.

Q. And will you have a strong market in one area and at the same time a weak market in another?

A. That's usually true.

Q. And do those trends reverse themselves, too, occasionally?

A. Yes.

Q. From time to time?

A. Yes.

[fol. 176] Q. And in connection with that, is it of value to a person who is selling lumber in the middle west and east of the middle west to have free diversion privileges so that

if a market weakens while the car is in transit, the car may be diverted elsewhere?

A. Yes.

Mr. Maguire: That is all.

Recross examination.

By Mr. Rockwood:

Q. Is that exercise of these diversion privileges and the exercise of the practice to start a car rolling without a market, does that generally result in that car being a longer time in transit than if the car were billed right straight through from one point to another, with a firm sale made, isn't that right?

A. I have heard that's true. We do very little transiting.

Q. How about the rolling business?

A. No rollers.

Q. You don't send rollers?

A. No, sir.

Q. So that you do not have substantial occasions to exercise these diversions in transit?

A. Well, occasionally we will. Someone can't sell an order, and we will have to divert the car.

Q. You say, occasionally?

A. Yes, sir.

[fol. 177] Q. That is quite exceptional?

A. The wholesalers we sell to do that. They buy cars and start them rolling. We don't do it.

Q. If they do start rolling, they take a longer time in transit, do they not?

A. I understand they do.

Q. Do you know?

A. I don't know.

Q. If the fact is—well, never mind.

Mr. Rockwood: I think that's all.

Mr. Maguire: That is all.

Exam. Dishman: Witness excused.

(Witness excused.)

Exam. Dishman: We will be off the record.

(Discussion off the record.)

Exam. Dishman: We will be on the record. We will recess until 9:30 tomorrow morning.

(Whereupon, at 5:05 p. m., an adjournment was taken until 9:30 a. m., Friday, June 25, 1954.)

[fol. 180]

Transcript of Proceedings—June 25, 1954

Exam. Dishman: The hearing will come to order, please. Do we have any newcomers who would like to enter an appearance at this time?

Mr. Cockrum: Mr. Examiner, I would like to enter my appearance. Henry A. Cockrum, Office of Solicitor, U. S. Department of Agriculture, Washington, D. C., appearing with Mr. Pease on behalf of the Secretary of Agriculture of the United States.

Exam. Dishman: What is your position, do you know, at this time?

Mr. Cockrum: We do not know at this time, Mr. Examiner.

Exam. Dishman: Have you filled out an appearance blank?

Mr. Cockrum: I haven't, but I shall.

Exam. Dishman: Any others? Are you ready to proceed?

Mr. Rockwood: Mr. Examiner, I am prepared to cross examine on Exhibit No. 1. It will be very brief. Mr. Nickels.

Mr. Maguire: That will be entirely satisfactory.

W. H. NICKELS having been previously sworn, was recalled and testified as follows:

Cross examination.

By Mr. Rockwood:

Q. You have Exhibit No. 1 before you, Mr. Nickels?

A. I have.

Q. Can you tell us, with respect to the cars included in [fol. 181] your tabulation on pages 1 and 2 of the Exhibit, how many of those cars moved to Portland, Oregon or destinations in the Portland switching limits?

A. It can be determined from the original detail.

Q. You can't tell us now?

A. No, sir.

Q. Can you tell us how many of the cars included in the tabulations on pages 1 and 2 moved to destinations on the SP&S which are likewise served by the Union Pacific or the Southern Pacific?

A. Not from the detail available here. It's in the home office.

Q. If I asked you the same questions with respect to the other sub-divisions of your exhibit relating to eastbound cars on the SP&S and similarly eastbound and westbound on the Oregon Trunk and the Oregon Electric, could you give the answers?

A. From the detail in the home office only.

Q. You can't tell us now?

Mr. Maguire: Wait a minute. Is that question directed to Portland, Oregon?

Mr. Rockwood: No, I said similar questions, Portland, Oregon or stations served also by the Union Pacific or Southern Pacific, but the question was broad.

Mr. Maguire: You understood the question, did you, Mr. Nickels?

The Witness: Yes.

By Mr. Rockwood:

Q. Have you prepared a tabulation which you can show to us of the revenue which the Milwaukee obtained in

[fol. 182] the year 1952 on business from and to points on the Union Pacific and Southern Pacific which are served also by the SP&S System lines which moved via the Union Pacific-Milwaukee route via Marengo, Washington?

A. No tabulation was prepared.

Q. Now, a great deal of the material in this exhibit relates to cars received by you from lines other than the Great Northern, Northern Pacific and SP&S, or delivered by you to lines other than the Great Northern, Northern Pacific and SP&S?

A. The tabulation only includes the traffic originating or terminating on the SP&S, Oregon Trunk and Oregon Electric.

Q. However, turn to page 6—this is what I am referring to. That traffic originated at stations on foreign lines. How do you define the words "foreign lines"?

A. Lines beyond our line where we acted as intermediate carrier.

Q. Which would include lines other than the Great Northern, Northern Pacific and SP&S?

A. That's right.

Q. And that is, wherever the words "foreign lines" are used in this exhibit, we understand that it means lines other than the Milwaukee, Great Northern, Northern Pacific and SP&S System lines?

A. That's right.

Mr. Rockwood: Mr. Examiner, I move to strike the entire exhibit on the grounds that the evidence relating to [fol. 183] the revenues and business of lines other than the Great Northern, Northern Pacific, SP&S and Milwaukee is entirely irrelevant and immaterial, because the Milwaukee has failed to join as defendants any carriers other than the SP&S System lines, and there are no carriers here represented in behalf of the defendants other than the Great Northern, Northern Pacific and SP&S System lines, and there is a failure of party defendants if the Complainant here seeks to have the Commission prescribe joint rates in connection with lines other than the Great Northern, Northern Pacific and SP&S.

I may point out that the prayer of the Complaint asks for that relief, but the Complainants have joined no defendants other than the SP&S System Lines. For instance, the New York Central is not a party. The Pennsylvania and eastern railroads are not parties, still the Complaint seeks relief from the SP&S to require the SP&S to establish joint through rates with the Milwaukee and its connections, which would include such lines as the New York Central and Pennsylvania.

The Commission, under the pleading, would have no such authority, and I move to strike the exhibit.

Mr. Maguire: It seems to me, Mr. Examiner, that this motion runs rather, giving full weight to all of counsel's remarks, runs rather to the weight of the exhibit rather than admissibility or materiality. The purpose of the exhibit was to show the traffic in which— Now, certainly—let [fol. 184] me strike that remark and make one preliminary remark—certainly that motion cannot run to those portions of the exhibit which show traffic originating and terminating on stations on the Complainant and terminating or originating, as the case may be, upon the SP&S. That motion would not lie to that because those are the only two carriers involved.

Mr. Rockwood: I will modify my motion to—

Mr. Maguire: Strike out the foreign lines?

Mr. Rockwood: To make it inapplicable to shipments originating or terminating on the Milwaukee and originating or terminating on the SP&S System lines where there is no intermediate carrier other than the SP&S System lines and the Milwaukee.

Mr. Maguire: You mean that you want to strike all portions where we received it? Why don't you stop and think what you want to move?

Mr. Rockwood: I have my motion made.

Mr. Maguire: Then I will take your position as it was without your afterthoughts.

Mr. Rockwood: All right.

Mr. Maguire: This runs to the entire exhibit as a motion to strike. I submit that those are the questions that have been raised by counsel, and are matters properly raised in argument and briefs, rather than that question of ad-

missibility of evidence. The purpose of the exhibit is to show the volume of traffic between, which originates or [fol. 185] terminates on the SP&S and in which the Milwaukee participates and on which it receives, in part, the full haul between Spokane and the eastern destinations or interchange points and the traffic which is short hauled, having been received at Minnesota Transfer and other eastern gateways. That is the sole purpose of the exhibit.

There is a substantial controversy between the lines as to the other questions of remedy available. The defective parties pleaded by counsel, I think, is entirely a matter for brief and argument rather than a motion to strike. I believe the entire exhibit is admissible for the purpose I have mentioned and is competent testimony.

OFFER IN EVIDENCE

Exam. Dishman: Do you offer the exhibit in evidence now?

Mr. Maguire: We do offer it in evidence.

Mr. Rockwood: Mr. Examiner, Mr. Maguire seems to take the position in this case that however loose his pleadings are and however defective he may be with respect to parties, the Commission should listen to everything Mr. Maguire offers and that the Examiner should abrogate and fail to function as an Examiner to rule on evidence which is not admissible. Mr. Maguire, under his theory, could show the rates on lumber in southern territory to Florida or something like that, which would obviously not be material. Mr. Maguire's position is that whatever he wants to offer, the Examiner has got to listen to and it's got to be put in the record, and then it goes simply to the weight of the evidence.

[fol. 186] Exam. Dishman: Your motion, as I understand it, Mr. Rockwood, goes to the entire exhibit? You are not contending—

Mr. Rockwood: I modified it.

Exam. Dishman: That portions of this exhibit are pertinent?

Mr. Rockwood: I modified my motion to withdraw it with respect to data in this exhibit, if it can be segregated, relating to shipments which originated at stations

on the Milwaukee and terminated at stations on the SP&S or vice versa, and I will further modify my motion to restrict it so it will not apply to data in this exhibit which was handled either by the Great Northern or Northern Pacific as an intermediate carrier.

Mr. Maguire: Wait a minute. To any portion of it that was handled by Great Northern or Northern Pacific?

Mr. Rockwood: You understand me.

Mr. Maguire: I am just taking your word, not what I think you might mean.

Mr. Rockwood: To traffic which originated or terminated on the Milwaukee or SP&S and in which the Great Northern or Northern Pacific and no other carrier was intermediate carrier.

Exam. Dishman: It is your motion, then, that the exhibit be received for that purpose?

Mr. Rockwood: I move to strike everything except the portions limited as I have defined them.

Exam. Dishman: Is that agreeable?

Mr. Maguire: No, it certainly is not agreeable, Mr. [fol. 187] Examiner, because I think that this question of defect in parties— Now, I am not going to accept counsel's characterization of my position in this case. I will state my own position, of course, but the question of defective parties is one that ordinarily and properly is raised before the Commission itself. This motion to strike is based solely upon the question of defect in parties and, therefore, that being a collateral question to any alleged defect, I submit should be settled by the Commission and is properly the subject of brief and argument rather than motion to strike at this time.

Exam. Dishman: Well, enough has been said about this exhibit so that the Commission can determine what weight to give it. It will be received.

(Complainant's Exhibit No. 1, Witness Nickels, was received in evidence.)

Exam. Dishman: Does that conclude the cross examination?

Mr. Rockwood: I have no further cross examination of Mr. Nickels.

Mr. Maguire: I think I just had one question here.

Redirect examination.

By Mr. Maguire:

Q. Mr. Nickels, as I recall Mr. Rockwood's question about what was included in foreign lines, you said that meant railroads other than the SP&S System, the Great Northern and the Northern Pacific. Now, is it possible that there may be cars included in your foreign line re-
[fol. 188] ceipt or delivery portions of the exhibit where the line from whom or to whom we delivered for ultimate destination or from point of origin might possibly have been either the Great Northern or the Northern Pacific?

A. Yes, it is possible.

Mr. Rockwood: Do you know the extent to which—excuse me. Were you through? I am sorry.

Mr. Maguire: That is all.

Mr. Rockwood: Do you know the extent to which that may be present in your exhibit?

The Witness: Not without examination of the detail.

Mr. Rockwood: That's all.

Exam. Dishman: Witness excused.

(Witness excused.)

Mr. Rockwood: Mr. Examiner, I anticipate that Mr. Maguire, following the program he suggested yesterday afternoon, will call witnesses other than railroad officials or railroad employees through the balance of the day, and before we get into that, my associates point out to me that at the time I made the motion to strike, directed to you as Examiner, as distinguished from the motion to strike that I filed with the Commission, no ruling was made on that by the Examiner, directly on that motion.

Exam. Dishman: The motion went to strike what?

Mr. Rockwood: Section 3 (1). I renewed my motion to you.

Exam. Dishman: I stated at the time that the Examiner
[fol. 189] was without authority to strike any matters from the Complaint. Is that what you have reference to?

Mr. Rockwood: Yes. So I take it my motion is denied?

Exam. Dishman: That is right.

Mr. Rockwood: Now, may I ask if the Examiner considers that it is in order that he communicate with the Commission to determine, one, whether the Commission has ruled on our motion to strike, and, two, if the Commission has not ruled on the motion, whether it wishes to give the Examiner authority to rule on the motion here.

Exam. Dishman: Well, I ascertained that before leaving Washington, and they were indefinite. It was indefinite as to whether or not the Commission would take any action on it at this time. Now, I will say this: that any evidence that is introduced regarding that matter, you have a standing objection and any evidence that would come in, would be coming in over your objection, and you would have the remedy to file a motion to strike.

Mr. Rockwood: That's true, of course. I had hoped that in the light of the argument that occurred yesterday, the Examiner might at this time see what the Commission, since he left Washington, has done, whether they have in any way considered or acted on the question.

Exam. Dishman: It is my understanding that that is the way they prefer it to be handled. Your rights would be [fol. 190] protected in view of the fact that you would be in a position to file a motion to strike.

Mr. Rockwood: All right. That is all.

Exam. Dishman: With the understanding that it is understood now that you have a standing objection to all of this, so you don't have to make objection at any specific time. The record will show that you do have a standing objection.

Mr. Maguire: Mr. Examiner, I do not like to inflate the record with remarks of counsel, but since there is this standing objection, to which I have not made a standing reply, let me state—I want to state very briefly in answer to the blanket motions to strike that have been made by counsel—that while the testimony of a witness might be applicable in support of a contention of violation of paragraph 1 of Section 3 of the Act, that same testimony could also be admissible under the provisions of Section 15 (3) of the Act, which is a section of the statute empowering the Commission— It's not a grounds of complaint for the establishment of through rates—but is what confers juris-

diction upon the Commission, and I will only read a few words—

Exam. Dishman: Well, you might—

Mr. Maguire: That this testimony may be used even though it might, in part, be used, or it might all be used in support of Section 3 (1) allegation, it is also admissible to show that these routes, what routes necessary here, are [fol. 191] necessary or desirable in the public interest. I merely wanted to make that observation.

Exam. Dishman: I was going to state that any motion to strike, you would be given opportunity to reply to it. Are you ready to proceed now?

Mr. Merrill: Call Mr. Howard, please.

W. J. Howard was sworn and testified as follows:

Direct examination.

By Mr. Merrill:

Q. Will you state your name, address and occupation?

A. W. J. Howard, Missoula, Montana. Occupation, Secretary Manager of Montana Retail Lumberman's Association.

Q. What is the nature of your duties in such capacity, Mr. Howard?

A. Well, like all trade associations, we are always engaged in doing those things for the group as a whole that are of interest and benefit to all of them, which they normally are not in a good position to do as individuals or which can be done, let's say, more economically as a group, and in our particular instance, of course, that involves merchandising of lumber and milling materials.

Q. And does it have anything to do with the obtaining of lumber and lumber materials?

A. Very definitely would. If there were any obstacles in the way of obtaining them, it might work to the disad- [fol. 192] vantage of our own people in competition with others also in the position to secure materials for the consumer.

Q. How long have you been connected with the lumber industry?

A. I have been connected in my present position with the Montana Retail Lumbermen's Association since 1936. Previous to that time, I had had various experience, particularly in the lumber business out in the woods and the camps as well as other experience in trade association work on other building materials.

Q. Are you familiar with the issues involved in the present proceeding?

A. I think so.

Q. Do you represent your Association in this matter?

A. No.

Q. Did you attempt to secure any authority from the Directors of your Association to represent it here?

A. No.

Q. Why did you not do so?

A. Because the issues involved are not affecting our entire membership. We have 185 dealers constituting about 90 per cent of the retail lumber dealers in this State and a great many of them are located, let me say, on the Great Northern where this issue is of no interest at all.

Q. To your dealers?

A. On those locations, yes.

Q. Is your organization State-wide?

[fol. 193] A. Yes.

Q. And did you feel that this proceeding was of particular concern only to your dealers located along the Milwaukee Railroad in Montana?

A. That would be true, naturally.

Q. Whom do you represent in this proceeding, Mr. Howard?

A. I have specific requests from the following dealers to represent them in behalf of the Complainant's contention here. Would you like to have me read them?

Q. I would like you to.

A. Simsins-Hillen Lumber Company of Bozeman, Montana; Montana Lumber and Hardware Company—

Mr. Rockwood: Take it slow, will you, please?

The Witness: Their headquarters is at Lewistown, operate four or five yards in that area; Gallatin Lumber Company, Bozeman; Kenyon-Noble Lumber Company of Bozeman; Three Forks Lumber Company at Three Forks, Montana—is that slow enough, Mr. Counsel?

Mr. Rockwood: Fine.

The Witness: Empire Building Materials, Inc., Bozeman; Gimble Lumber Company, Anaconda, Montana; Edwards Lumber Company, White Sulpher Springs, Montana; Bozeman-Cashway Lumber and Hardware Company, Bozeman, Montana—

Mr. Golden: What was the last name?

The Witness: Bozeman-Cashway Lumber and Hardware Company. That is all.

[fol. 194] By Mr. Merrill:

Q. What is the nature of the business of these companies which you have just named?

A. They are all engaged in the sale of lumber and building materials to the users or consumers of those materials.

Q. Where are the yards located?

A. Let's see, I believe I gave those after each one. Do you want it repeated?

Q. Specifically, the Montana Lumber and Hardware Company, do they have more than one yard?

A. Yes.

Q. Where would they be located?

A. One at Harlowton—

Q. Harlowton?

A. —and Roundup and Winnett, and one other little town—

Mr. Rockwood: Winnett, is that?

The Witness: Yes. They have another one around somewhere in a small town up on the Milwaukee.

By Mr. Merrill:

Q. Does the Gallatin Lumber Company have a yard at a location other than Bozeman, Montana?

A. No.

Q. Are the points at which these companies are located and have yards on the Milwaukee Road, are some of them jointly served with the Northern Pacific?

A. In some instances, they are served by more than one carrier and in other instances, only by the Milwaukee.

[fol. 195] Q. What is the—strike that, please. Is a substantial portion of the lumber for these dealers located in the State of Oregon and the State of Washington?

A. Yes, quite a lot of the origin of lumber sold in Montana is in these areas.

Q. Does that include territory which is served by the Spokane, Portland and Seattle Railway?

A. Yes.

Q. Do you know whether there are joint through rates now in effect on lumber from points on the SP&S Railway Company to points in Montana where the traffic would move on a line haul via the Milwaukee Railroad?

A. Yes.

Q. What point in Oregon is such rate in effect from?

A. The only one I have at the moment is Vernonia, which I believe is such a point.

Q. Is that as shown on Exhibit No. 9 heretofore introduced in this proceeding?

A. I thought I heard that was listed there yesterday.

Q. Do you know whether there are joint through rates available from some points on the Spokane, Portland and Seattle Railway to points on the Milwaukee Railroad in Montana via routes other than the Spokane, Portland and Seattle Railway Company?

A. Yes.

Q. And do you know what routes they might be available over?

[fol. 196] A. Well, it's my understanding that such rates are available in origin points served by the Southern Pacific and the Union Pacific.

Q. Is that a complete line of rates available from all points served by the Spokane, Portland and Seattle Railway Company to points on the Milwaukee Road in Montana?

A. Well, my investigation indicates that they are not.

Q. Could you name some points at which you know lumber is produced and in which your people whom you represent here today are interested in securing lumber from which there are not joint through rates available to points on the Milwaukee Railroad in Montana involving a line haul over the Milwaukee Road?

A. When this question arose, I made it my business to try to find out some of these points and list them. Astoria —I have a list of them here—Astoria, Awbrey, Albany, Oregon, Bingen White Salmon, Bradford, Cooks, Carson, Washington—

Mr. Rockwood: Just a moment. Bradford—what was that, Bradford?

The Witness: Bradford, Cooks, Carson, Clatskanie—

Mr. Rockwood: Clatskanie.

The Witness: Excuse me. I am a Montana man.

By Mr. Merrill:

Q. To shorten it up, Mr. Howard, approximately how many points did you determine there are or are not joint through rates available via the Milwaukee Road from SP&S origins?

[fol. 197] A. Did you say joint rates not available?

Q. Yes.

A. Well, I have a list. This list that I was reading from has on it 147 manufacturers, that is, substantial manufacturers of lumber and lumber products. I assume there are a great many more smaller operations that are located on these Oregon short lines, and in checking them off, it appears to me that about 67 of those manufacturers are located at points where there are joint rates, leaving about 80 of them in what appears to me about 60 different towns to which joint rates do not apply.

Q. Now, referring to dealers who are located at local points on the Milwaukee Road, of whom you are speaking today, what benefit would be derived by those dealers if the relief herein sought by the Complainant were to be granted and the joint through rates which are sought would be put into effect?

A. Was your question affecting those dealers served by more than one road?

Q. At local points on the Milwaukee Railroad; in other words, served only by the Milwaukee Road.

A. Well, the competition, of course, in the sale of lumber and building materials these days is pretty rough.

It seems obvious to me that these 80 mills which were read off here and the 60 towns where there is no joint through rate, it would be more or less out of competition as far as securing their lumber supplies are concerned. In [fol. 198] other words, if there happened to be an opportunity to make a buy of lumber on one of those points from one of those mills, if their destination was Milwaukee only, there would be that differential in freight there which would have to be considered before they would purchase the lumber, of course, from such mills.

Q. Have you any illustrations of the difference in rates between comparable points which a dealer at a local point on the Milwaukee would be handicapped by in competition with a dealer located on the Northern Pacific Railroad?

A. Well, I selected, I picked up some of it.

Q. Go ahead, Mr. Witness.

A. I picked up some of the rates from typical points for my own information. Roundup, Montana, which has a yard operated by the Montana Lumber and Hardware Company, the rate from Sweet Home and Astoria, which I assume is perhaps comparable to the rates to many of these other points in these 60 mills, is 86 cents basic rate into Billings.

Mr. Rockwood: Excuse me, 86 from Sweet Home and Astoria to Roundup?

The Witness: Yes.

Mr. Rockwood: Via what route?

The Witness: Milwaukee.

By Mr. Merrill:

Q. Milwaukee from Spokane?

A. Yes, through Spokane, picked up on the—

Mr. Rockwood: I don't like to interrupt, but let's keep [fol. 199] it straight. He said "from Spokane" or "through Spokane"? I am not sure which.

Mr. Merrill: Through the Milwaukee carrying it from Spokane.

Mr. Rockwood: Then the 86 cents rate—

The Witness: Would you like me to restate it? My understanding is the rate from Sweet Home and Astoria

originating on these short lines, shipped through Spokane, transferred to the Milwaukee for destination at Roundup, is 86 cents basic.

By Mr. Merrill:

Q. What do you mean, basic?

A. Well, of course, you had to add to that the 15 per cent plus the three per cent tax, which brings you out at the final rate.

Q. Fifteen per cent is the surcharge under Ex Parte 175?

A. Yes.

Q. Will you continue with your comparison?

A. The similar basic rates into Billings, Montana, which is about 40 or 42 miles directly south of Roundup, is 72 cents plus the 15 and three.

Q. Now, what would be the difference in the cost to the dealer at Roundup of a carload of lumber compared to the cost to the dealer at Billings, Montana as a result of this difference in rates?

A. Well, in round figures, it would be around 16 cents. The difference between 72 and 86 is 14, and when you add the 15 and three, you arrive at somewhere around 16 cents per cwt., and on lumber it probably averages 2500 to 3000 [fol. 200] pounds at least, even when it's partially dry, and 3000 pounds times 15 cents would be four dollars and a half to five dollars, or even higher, of course, if it's heavier lumber than that.

Mr. Rockwood: Five dollars a car?

The Witness: A thousand board feet.

By Mr. Merrill:

Q. Can you convert that into an average carload and give the difference in cost to the dealer per carload?

A. Well, I don't think very much of them are shipping less than 20,000 feet. What is it, 30,000 feet in a car? Twenty thousand would be around $100.00.

Q. Some of these dealers whom you mentioned are located at points served jointly by the Northern Pacific Railway?

A. That's right.

Q. What benefit would there be to dealers located at such points?

Mr. Rockwood: Just a minute. This is specifically going to Section 3 (1), and I want to flag that one with a specific objection.

Exam. Dishman: All right. Objection noted.

Mr. Merrill: It is understood, however, Mr. Examiner, if the evidence is pertinent to another section of the Act, it is admissible in evidence.

The Witness: Shall I answer it?

Exam. Dishman: That's right.

The Witness: Well, there are two angles there. One, perhaps, may or may not have anything to do with this [fol. 201] case, but let's take Bozeman, served by the two roads. As far as these specific points are concerned, points of origin to which there are no joint rates applicable, a dealer in Bozeman buying from one of those points is compelled, whether he likes it or not, to ship over the railroad which has the through rate because of the differential. Couldn't very well ship on the Milwaukee and pick up the differential that would exist.

The other point is that there are some dealers that might have consumer sales involved at points sufficiently outside of Bozeman that might conflict with serving that same point from a solely Milwaukee served destination.

By Mr. Merrill:

Q. Have you an illustration of that, Mr. Howard?

A. The best illustration, in view of the fact that these Bozeman people have asked me to testify, would seem to be Gallatin Gateway served only by the Milwaukee out of Bozeman and about 15 miles away from Bozeman, which my information indicates there is no through joint rate from that limited list of mills again. The differential seems to be quite great there from Astoria or Foster and other points in Oregon; Astoria, 89 cents over the Gallatin Gateway, and 72 cents over the Northern Pacific to Bozeman, 15 miles away, which is a differential of about 18 or 19 cents, when you add the 15 and three again, 18 or 19

cents being awful close to around $6.00 a thousand for 15 [fol. 202] miles. It practically compels them, even for a job in the Gallatin Gateway or anything that could be served from there, to put it on the Northern Pacific into Bozeman and truck it to the job. You wouldn't think of sending it an additional 15 miles—

Q. By rail?

A. —by rail, for that amount of money.

Q. Now, when the dealer has only a non-competitive combination rate available to him from a point on the SP&S railway, what effect does that have on his choice of his source of lumber?

A. Well, he just isn't going to buy it except at the place where he can get the best deal. That's all there is to that.

Q. That would mean, then, that the SP&S Railway Company would not haul lumber which the dealer would otherwise have purchased at an origin on that railroad, is that correct?

A. Certainly to points served only by the Milwaukee at destination.

Q. Now, what effect would it have on his choice of the means of transportation of lumber?

A. Well, our dealers themselves don't do much trucking of lumber. Of course, we are having more and more lumber trucked all the time, whether we like it or not, more and more competition in the field for the customer's business by either people who do truck—and I am speaking of people not under any Interstate Commerce Commission regulations, in explanation of that I will tell you—or by purchasers themselves who do have trucking equipment. [fol. 203] They go directly to the mills out here on the coast, may land in one of these mills which we speak of or not, but nevertheless, these sources of supply are involved in that sort of competition. I don't know whether I answered your question sufficiently or not.

Q. Did you state that trucking was on the increase? I believe you did.

A. Definitely of much concern to us.

Q. And is there also some local trucking from points off the Milwaukee Road which may result?

A. Yes, the example I gave you of Billings here a few minutes ago about $5.00 differential—hope there are no truckers in here—but if I were a smart trucker and a pretty good-sized job came up in Roundup or in the immediate environs of Roundup, let's say for a school or something, and I knew the successful contractor on that bid and I knew this rate differential, I would attempt to sell him the lumber and haul it to him to Roundup but have the destination Billings if I happened to be lucky enough to get a good price from one of these mills, and that is done.

Q. Would you define the term "transit car", Mr. Howard?

A. Well, transit car in the trade has always been, in my language, developed from the situation where the manufacturer hasn't sold his output and wants to get a car rolling and puts into that car a group of items that normally [fol. 204] would be acceptable by a certain class of the trade and just starts it rolling eastward, depending upon whatever sales contacts he has to sell that car before it has reached its destination, and then diverting it to that destination.

Exam. Dishman: Does it ever happen that the car is not sold in transit?

The Witness: Yes, I think it does.

Exam. Dishman: Then what happens on the destination end?

The Witness: Well, I would think—and I think this is a correct statement—you keep it on rolling eastward with the hope they find a customer or finally decide to stop it some place and pay demurrage on it for a while until they do. That would seem the only option. The character of the lumber market at the moment has a great deal to do with, Mr. Examiner, you understand.

By Mr. Merrill:

Q. Is the opportunity to buy such a car important to the dealers whom you represent?

A. Yes, we have agents in the State of Montana—I am not speaking of rail agents; I am speaking of men who sell lumber on commissions—who are notified by these mills

of their transit shipments who try to get rid of them for them, and they, of course, contact our dealers and say, we have got a bargain for you today from a certain origin, contending certain materials, and if he is under the gun to get rid of that car before they find a sale for it, he might get a pretty good bargain under certain market conditions. [fol. 205] Q. And as to dealers located on the Milwaukee Road and served by no other railroad, are they then at a disadvantage if such cars do not move via the Milwaukee Railroad?

Mr. Rockwood: Well, now, excuse me—maybe I misunderstood. By "such cars", you mean all cars which may eventually roll clear to New York City, or are you restricting it to a limited class of these so-called roller or transit cars?

Mr. Merrill: Transit cars as the witness has defined them.

Mr. Rockwood: That goes all the way to New York City.

Mr. Merrill: It could possibly go there.

By Mr. Merrill:

Q. Will you answer the question?

A. Well, if that car had started on one of these points to which there is no joint rate available over the Milwaukee, you would have two conditions arise: Either the manufacturer, the seller of the car or the router of the car is going to transfer at Spokane over the Milwaukee and let it pass on eastward, or else he is going to let it roll over the Great Northern and Northern Pacific, and if it started rolling over the Great Northern and Northern Pacific, then it would be my understanding you could not divert it up to the Milwaukee points without the—no, if it's to come over the Milwaukee, you would have that differential in there, of course—

Q. You are referring now to a car which is routed out of Spokane via the Great Northern or Northern Pacific, is [fol. 206] that right, and which is diverted to a Milwaukee Road local point?

A. Yes.

Mr. Merrill: That's all.

Cross examination.

By Mr. Rockwood:

Q. How many members are there in your Association? I believe you gave them.

A. About 186.

Q. 186; and of those, you named—

A. Nine, representing 13 yards.

Q. Yes. All of those are located on points now reached by the Milwaukee Railroad?

A. That's right.

Q. And some of those nine points are served also by the Northern Pacific?

A. That's correct.

Q. Now, of those nine, please tell us those that are served by the Northern Pacific. Bozeman?

A. Yes, all of those in Bozeman.

Q. Lewistown?

A. Lewistown, yes. May I read a paragraph from the letter from Lewistown which says all our branches are located on the Milwaukee only?

Q. Let me see it. I don't know whether I will let you read it or not.

A. That's all there is to it.

[fol. 207] Q. It's hearsay, of course. I may not object if I read the letter.

A. His headquarter yard is in Lewistown, served by both.

Q. The Milwaukee and Great Northern?

A. In his own words, he says, "our branches—" he means other yards "—are located on the Milwaukee road only."

Q. Harlowton, Roundup and Winnett—

A. And one other I can't think of.

Q. Three Forks—is that solely Milwaukee or joint with some other roads?

A. Both roads.

Q. Northern Pacific or Great Northern?

A. Northern Pacific.

Q. Anaconda?

A. Anaconda is pretty well served by that Butte short line.

Q. Served by Great Northern, Northern Pacific and Milwaukee?

A. Yes, all three roads go through Butte as the base point.

Q. But what roads serve Anaconda, as such?

A. Well, that's the short line from Butte over to Anaconda. I don't believe the other two roads pass by Anaconda—15 miles away.

Q. That's the Butte, Anaconda and Pacific?

A. I think so.

Q. The Milwaukee does not get to Anaconda proper and neither the two northern lines?

[fol. 208] A. That's right.

Q. What about White Sulphur Springs?

A. Believe served only by the Milwaukee.

Q. All of your members that you represent here today are engaged simply in the business of buying lumber and selling it to the consumers, in other words, operating retail yards, is that correct?

A. That's correct, in all quantities, l.c.l. and carloads and other building materials.

Q. None of them manufacture lumber or lumber products, do they?

A. Not directly. There's separate corporations. One or two or some of them have one or two small operations, but not of great consequence.

Q. You said that at the present time through rates to certain territories from points on the SP&S are applicable via the Milwaukee only from Vernonia, Oregon. What is the territory in Montana to which there are joint through rates with the Milwaukee presently from Vernonia, Oregon, do you know?

A. No, I don't.

Q. This map which is Complainant's Exhibit No. 9 shows in green a stretch of Milwaukee territory and branch lines which corresponds to the green on the other side of the map under the station Vernonia. I take it that through rates via the Milwaukee are applicable to

all stations on the Milwaukee east of Missoula, is that correct?

A. I suppose that's true.

[fol. 209] Mr. Rockwood: Is that right?

Mr. Merrill: That's the purport of the exhibit.

By Mr. Rockwood:

Q. Now, of course, from Vernonia, you have a certain joint through rate to a point immediately east of Missoula. That same rate, of course, would apply by intermediate application from certain points on the SP&S east of Vernonia, would it not?

A. I suppose it would.

Q. So that would include the entire Keasey Branch of the SP&S on which Vernonia is located, would it not?

A. Looks to me like that would be true.

Q. And even some territory on the main line east of Linnton, which is the junction of the Keasey Branch with the Astoria Branch of the SP&S?

A. Well, I will grant that in view of the fact that Vernonia is one of the points which had the rate, and I wasn't concerned.

Q. So far as Vernonia is concerned, if that same Vernonia basis—wait a minute. If that Vernonia basis of joint through rates with the Milwaukee now applying to points east of Missoula were made applicable to all Montana destinations on the Milwaukee west of Missoula, so far as Vernonia is concerned, you would be quite happy, would you not?

A. I don't think I can answer that.

Q. Well, what do you want here? I am trying to find out what your members want.

[fol. 210] A. Well, my testimony, regardless of Vernonia, which was taken out of the picture because there was a through rate, my testimony has been to the effect there are certain origin points affecting certain destinations in Montana which show a differential travelling over the Milwaukee versus the Northern Pacific.

Q. Because there are presently no joint through rates via the Milwaukee?

A. Right.

Q. Well, I am coming to that. If joint through rates were made from Vernonia to all points in Montana, including the area west of Missoula, on the same basis as they now apply to the stations on the Milwaukee east of Missoula, so far as Vernonia is concerned as an origin point, your complaint would be satisfied, would it not?

A. I understand from Vernonia the rate is already—

Q. To a limited part, and if we extended the so-called Vernonia basis to territory west of Missoula on the Milwaukee, so far as Vernonia as an origin point is concerned, your complaint would be taken care of?

A. Roughly, off-hand, I would say as far as Vernonia is concerned.

Q. So far as the shippers you are speaking for?

A. From points of origin, from Vernonia, yes.

Q. Actually, how many of these points, how many of your dealers that you named are located west of Missoula? Any of them?

A. No.

[fol. 211] Q. They are all east of Missoula?

A. Yes.

Q. All right, you gave an example of—let me ask this: Other than these nine members, your other membership did not care to appear to take a position in this case, either pro or con, is that right?

A. They didn't express any interest in it because a great many of them are not affected at all, you understand.

Q. You gave Sweet Home as an origin point in one or two of the comparisons you made. Where is Sweet Home, do you recall?

A. Somewhere around this area. I used to travel, but it's been so long, I have forgotten.

Q. To shorten it, Sweet Home is on the branch line of the Oregon Electric which is colored red on this map?

A. I see it now, yes.

Q. And from that branch line, as you may have heard the testimony yesterday, the joint through rates applicable on the basis described from SP&S lines, colored in yellow on this map, do not apply. Do you understand?

A. You mean when travelling over—

Q. The Milwaukee.

A. Yes, that's my understanding.

Mr. Merrill: May I have the question read, please?

(Question read.)

By Mr. Rockwood:

Q. Have you or any of the members that you represent [fol. 212] ever made a request of the SP&S or a request on any rail bureau docket for the extension of the basis from SP&S points, generally, to the Santiam Branch, colored in red on this map? Have you ever made that request?

A. No, not that I am aware of.

Q. Do you know of anybody that ever made that request?

A. No. There might be somebody. I don't know.

Q. How did it happen that you came out here to testify if no request was ever made by any of your members for the basis of rates that you suggest?

A. Well, it's very simple. You have a case coming up here involving the thing that apparently interests these men.

Q. When did you first hear of this case?

A. Oh, I guess about the first of January.

Q. And from whom were you told about the case?

A. We were all contacted by both the Complainants and the Defendants in this case with regard to our attitude.

Q. By whom were you contacted about the first of January or early in January?

A. I am just guessing at the date. It was several months ago.

Q. Yes.

A. The Milwaukee asked me what our attitude was going to be and also a few days later, the Northern Pacific asked me.

Q. When did the Milwaukee ask you what your attitude would be?

A. I would guess it was in January. I am not sure.

[fol. 213] Q. When did the Northern Pacific ask you what your attitude would be?

A. Oh, some time back there, whenever it was—might have been February, I don't remember.

Q. As a matter of fact, the Complaint in this case was filed in February.

A. Well, the—

Q. The Milwaukee inquired of your position before the filing of the Complaint, then, and the Northern Pacific inquired as to your attitude after the filing of the Complaint?

A. No, I can't answer that that way.

Q. You don't remember?

A. The original date. I didn't put it down, my friend.

Q. The Milwaukee came first, though?

A. Yes, by a few days. They beat them to the line by a few days.

Q. Now, who prepared the statement of rates that you have read into the record for comparative purposes?

A. The Milwaukee, at my request.

Q. When did they prepare it?

A. The original one here is dated May 4, and I have this other one, additional points here, and it isn't dated—a couple of weeks ago.

Q. This was after you decided to appear in behalf of the Milwaukee?

[fol. 214] A. It was after I had some intimation of our people that they might be interested in this thing. I made request for certain information.

Q. To prepare yourself to testify?

A. No, not necessarily to prepare myself to testify. To see what the situation was.

Q. Yes, but at that time, you had concluded to appear in behalf of the Milwaukee, or your members had asked you to?

A. No.

Q. And until then, until you had that information, you didn't know whether you wanted to appear or not?

A. Yes, I will answer your question that I knew perfectly well with both you fellows out in the field stirring up our people, one way or the other, I was going to get inquiries and I better get some information.

Q. Now, if the same basis of rates, SP&S, all SP&S

System points shown colored in yellow on this Exhibit No. 9 were made effective to all points on the Milwaukee east of Spokane, would your members for whom you speak, have the relief they want?

A. That would apparently give them the same privilege of shipping over the Milwaukee that they now enjoy over the Northern Pacific and Great Northern. If that is the purpose of your question, I would say—

Q. That would not give them the same basis. I don't want a misunderstanding. It would give them the same basis [fol. 215] to Montana points which the customers living along the Milwaukee back in South Dakota, North Dakota, Minnesota, Iowa, Missouri, Wisconsin, Illinois now have.

A. Please—all my testimony is confined to Montana.

Q. But that is not quite the same as they now have available via the Great Northern and Northern Pacific. I don't want a misunderstanding, but your people, for the most part, ship or buy on the Pacific Coast and ship to Montana and stop and sell it to the customers, isn't that right?

A. No, they buy a great deal of lumber in Montana itself. It's a lumber state, but this is one of their chief sources of supply.

Q. To the extent they buy on the Pacific Coast, they buy on the Pacific Coast, ship into Montana and sell to customers? That's their operation?

A. That's correct.

Q. If you have got through rates covering that movement, your members are substantially taken care of?

A. Providing those joint through rates apply to all points of origin.

Q. All points of origin on the SP&S to all destinations in Montana where your friends are in business?

A. If I understand your question correctly, yes.

Q. This isn't important at all, but do you know whether there is any sawmill at Astoria?

A. Well, I have listed here that there's two of them at Astoria.

[fol. 216] Q. Plywood operators, aren't they?

A. Pardon?

Q. Plywood mills?

A. Lumber and shingles, I guess.

Q. What is the name?

A. Fluhrer Brothers and Uptegrove Lumber Company.

Q. Uptegrove is a plywood mill, isn't it?

A. It isn't listed here as a plywood mill. It might be.

Q. Well, I won't make a further point—

A. Plywood is just as important to us, you understand, as lumber, anyway.

Q. Yes. Do your dealers find the service on the Northern Pacific fairly satisfactory?

A. Yes, as far as I know.

Q. And on the Great Northern, fairly satisfactory?

A. I think so.

Q. You have no serious complaints of the service that is rendered by either of those lines?

A. They seem to be doing all right.

Q. Just so that we will be clear, you said that joint rates are not available to Montana points from Astoria, Awbrey—what was the second station you gave? Then the third was Bingen White Salmon, Bradford and Cooks, and what was the second station?

A. Well, I had an alphabetical list here, Astoria, Bingen [fol. 217] White Salmon—

Q. What was the second one, Awbrey?

A. A-w-b-r-e-y. That's piling. Incidentally, we don't handle poles and piling.

Q. Again, if the basis applicable from SP&S stations colored in yellow on this map, applying to destinations on the Milwaukee back in South Dakota, Minnesota, Iowa, Missouri and Illinois, as indicated on this map, were made applicable to points in Montana all the way across the State on the Milwaukee, your limitation of sources of supply at these stations you name would be eliminated, would it not?

A. I don't care anything about the rates applicable in South Dakota or Minnesota or Illinois. If the rates which you speak of give us the relief these gentlemen want as far as shipments over the Milwaukee from Spokane are made competitive with Northern Pacific rates, their request will be satisfied, if that's your question.

Q. That's right. If the joint through rates were estab-

lished, for instance, from Cooks to points on the Milwaukee on the same basis as rates are now available from Cooks to points on the Northern Pacific, you would be satisfied?

A. Cooks and all other points of similar territory to which they do not apply at the present time, correct.

Mr. Rockwood: That's all.

Exam. Dishman: Any further questions?

[fol. 218] Mr. Torinus: I have one or two questions.

By Mr. Torinus:

Q. Mr. Howard, you mentioned that there were 80 mills on, I think it was the Oregon Trunk and Oregon Electric at non-competitive points, that is, points that were not competitive with either the Union Pacific or Southern Pacific, is that correct?

A. Yes. That is, 80-some mills of some consequence in the lumber production field.

Q. And there were 67 mills on those railroads at points which were common with either the Union Pacific or Southern Pacific, so that the rates now applied from those 67 mill points to Milwaukee destinations in Montana via the Union Pacific route through Marengo, is that correct?

A. Yes, such as Bend, Albany, Oregon, for example.

Q. Now, did you make any investigation to see how many additional mills there were at points on the Southern Pacific which were not common with the Oregon Electric from which Milwaukee points in Montana could draw lumber via the routes through Marengo?

A. No, I didn't. When I got to 80 mills or 147 mills, my curiosity was satisfied in that respect as to its importance to us. There may be a lot more.

Q. Well, there may be a lot more mills on the Southern Pacific from which rates apply to Montana in addition to those 67 mills?

A. Could well be, as far as I know.

[fol. 219] Q. As a matter of fact, the Southern Pacific is the largest originating carrier of lumber in the State of Oregon, isn't that correct?

A. I don't know. I would assume they possibly are.

Q. So there would be a large additional territory from Oregon from which lumber could be drawn and moved via the Southern Pacific, Union Pacific route through Marengo to Milwaukee destinations in addition to the territory on which those 67 mills are located, isn't that correct?

A. Well, that's correct. May I add, of course, that I haven't testified at all that we were being shut off from all lumber supplies of this certain group, you understand that.

Q. To the extent that your people on the Milwaukee in Montana could draw from that additional territory local to the Southern Pacific, they would have an advantage, would they not, over receivers on the Great Northern and Northern Pacific, do you know?

A. An advantage?

Q. Yes.

A. Off-hand, I don't see the advantage.

Q. You can't see—

A. Off-hand, I don't see the advantage if I understand your question. The lumber would arrive from these points of origin whether it came over the Northern Pacific or Milwaukee at the other end at the same price.

[fol. 220] Q. They would have this large additional source of supply on the Southern Pacific.

A. That I haven't named here, you mean?

Q. That's right.

A. I suppose there are a great many more, yes.

Mr. Lutterman: Rates apply via the Northern Pacific and Great Northern, Mr. Torinus, as well.

By Mr. Torinus:

Q. Have you made an investigation, Mr. Howard, of the rate application from Southern Pacific points in Oregon to destinations in Montana?

A. No, not beyond the point I have indicated here.

Q. I see. Now, with respect to those members of your Association on the Great Northern in Montana, I assume you have a great many members at local points on the Great Northern in Montana, such as Havre, Shelby, Glasgow and places of that kind?

A. Yes.

Q. I notice you testified that they, of course, would not be affected by this case. Who determined that they would not be effected?

A. Well, the Milwaukee Road does not approach, the Milwaukee road destinations are a long ways from all of those Great Northern destinations up there.

Q. Then—

A. To a degree, you might say that they are so far removed from it.

[fol. 221] Q. That's your conclusion, they would not be effected?

A. Yes, that's my conclusions as to why none of those fellows wrote to me.

Q. Did you inquire of them whether or not they would be effected by this proceeding?

A. Yes, I inquired of all our people.

Q. What sort of an inquiry did you make?

A. Well, you see, the inquiry arose from the fact that both the Complainant and the Defendant in this particular case were out among these dealers, talking pro and con, and I was getting inquiries from our dealers to the extent where the only reasonable thing for me to do was to send them a bulletin stating the case and to say to them, "Do you want me to appear for you or do you want me not to appear? Do you oppose my appearance for those, in behalf of those who might be effected in this case?" So, they have all been notified, as is the common custom in our organization, questions of this sort: "Say yes or no, or object, or ask."

Q. When you said, "Do you want me to appear for you," in your bulletin, did you indicate which side of the case you might testify for in this proceeding?

A. "For" or "against", they could have said to me. It was their answer, one way or another. If they had any reason to appear opposed, then I, perhaps, wouldn't have been here.

Q. Out of that membership of 186, you received author-

[fol. 222] ization to appear in this case from nine members, is that correct?

A. That's correct, largely in this area that is really effected, you see.

Mr. Torinus: No further questions.

By Mr. Golden:

Q. Mr. Howard, two points which you mentioned at which the people you represent are located are Bozeman and Three Forks?

A. Yes.

Q. Those are common points between the Milwaukee and Northern Pacific?

A. That's right.

Q. And Bozeman is the point, as a matter of fact, on the branch line of the Milwaukee, is that correct?

A. Is it?

Q. As to Bozeman and Three Forks, there is no doubt, is there, but there are joint through rates available to the people who are located there from all points on the SP&S System via the Northern Pacific?

A. That's right, providing he ships over the Northern Pacific. No option.

Q. As to Anaconda, it's true, is it not, that there are joint through rates available via the Milwaukee, the Union Pacific, the Northern Pacific and the Great Northern from all points on the SP&S System—

A. Yes.

[fol. 223] Q. —or one or the other?

A. Yes. In answering your question, are you going to ask another question on that Anaconda situation? I don't want to—

Q. Yes, perhaps I should split that question, from all points on the SP&S via the Great Northern and the Northern Pacific, there are joint through rates to Anaconda?

A. Yes, or to Butte, the nearest point to Anaconda.

Q. That's right, and as to points which are common to the SP&S, or the Oregon Trunk or Oregon Electric with the Union Pacific or the Southern Pacific, there are routes either via the Milwaukee or via the Union Pacific to Anaconda or to Butte, the nearest point?

A. Yes, that would be from those points, those 67 that I mentioned that were originated on the Southern Pacific or the Union Pacific.

Mr. Golden: That's all.

Redirect examination.

By Mr. Merrill:

Q. Would it be easier for the people whom you speak for today to buy from wholesalers routing cars from SP&S points if the wholesalers had the right of diversion in case your Montana dealer couldn't take it.

A. Yes.

Q. And as I gathered from the line of Mr. Rockwood's Questioning whether you would be satisfied if you had the same basis of rates in Montana that apply to all the terri- [fol. 224] tory colored in yellow, let me ask you this: Would you be satisfied and would your dealers be satisfied if they were still unable to buy these roller cars which move from Oregon and Washington with no fixed destination at the time of their movement?

A. No. Obviously, they are interested in only one thing and that's the complete equality as to the route over which they ship and the same rate to competitive points, and if that answer over there about the yellow points in North Dakota didn't include as I specified, their request would not be fulfilled.

Q. They have a definite interest in having that privilege, is that not correct?

A. Like any other seller of merchandise would, yes.

Q. Now, at the points which are jointly served by the Milwaukee Road and the Northern Pacific, are there some companies whose yards are more easily accessible to the Milwaukee Railroad?

A. You mean at destination, rail team track?

Q. Yes.

A. Yes, that's undoubtedly true. I couldn't give you examples of them.

Q. The list of mills which you have referred to on SP&S local points does not purport to be a complete list of all such mills, does it?

A. No, and I so testified. These were probably the major operations.

Mr. Merrill: That's all, sir.

[fol. 225] Recross examination.

By Mr. Rockwood:

Q. Your yards have no difficulty in keeping supplies of fir lumber from the Pacific Coast at the present time, do they?

A. This week they are, yes.

Q. Which yard? Oh, I am sorry. You are smarter than I am by a whole lot, except maybe the Commission will not take judicial notice of the fact that there is a lumber strike out on the west coast, to which the witness refers, but except for the periods abnormal because of conditions such as we have now, they have no difficulty in buying a good supply of fir lumber from the Pacific Coast, have they?

A. Well, the lumber market, as you know, Mr. Attorney, is up and down. Since the beginning of World War II, we have had a hot lumber market, and it could reverse in a year or two and be easy to secure lumber. I will go with you to that extent. It's up and down, even as it is this week. It might be cured next week. When it's hard to get, it's hard to get.

Q. And when it's hard to get, it's hard to get in Iowa and your situation in Montana is about the same as it is all over the country?

A. Yes.

Q. So that, compared with the country generally, the Montana retail yards have no difficulty in keeping supplied with all the fir lumber they want, have they?

[fol. 226] A. That's right, except in conditions where the lumber market is undersupplied.

Q. And that would be a general condition throughout the United States or might well be?

A. Yes, because the lumber mills' market depends on situations throughout the United States. We have had times scrambling around to get lumber. I have had a request, can you find a certain amount of lumber in Montana to take care of the situation, since I came to the hotel.

Redirect examination.

By Mr. Merrill:

Q. Under the circumstances mentioned by Mr. Rockwood, the dealer of a non-competitive combination rate from SP&S origin would have an additional handicap in obtaining his lumber, is that right?

Mr. Rockwood: Objected to as leading.

Mr. Merrill: I will submit the question as asked.

Mr. Rockwood: Objected to as leading and calling for a conclusion of the witness.

Mr. Merrill: This man is qualified to answer.

Mr. Rockwood: Sure he is. I objected on the ground it is a leading question.

Exam. Dishman: Do you have any knowledge of the subject?

The Witness: Yes. The situation is hotter than a firecracker right now. Our people have sold to consumers, have committed themselves to lumber right at the height of the building season here.

[fol. 227] Exam. Dishman: What do you mean by the expression "hotter than a firecracker"? Translate that.

The Witness: O.K. That's what I was about to do. The people have committed themselves to consumers of lumber for a large consumption of lumber for delivery in the height of the building season, all of a sudden, and those lumber shipments, many of them, have not been made prior to the strike. They are still committed to the buyer as the real seller, regardless of who they buy it from, so now every possible source of supply on the coast from which they might get lumber, mills that are not struck, to supply this customer is very important to them during the course of the strike.

By Mr. Merrill:

Q. In going back to the initial question, is a dealer with this non-competitive combination rate under an added disadvantage?

Mr. Rockwood: Objected to as the leading question which has merely been repeated.

Mr. Merrill: The question is still pending.

Exam. Dishman: Under an added disadvantage?

Mr. Rockwood: Compared with whom?

Mr. Merrill: Under a disadvantage in addition to the general disadvantage that all dealers face in obtaining lumber at this time.

Mr. Rockwood: I still object to it as a leading question.

[fol. 228] Exam. Dishman: Well, the witness may answer.

The Witness: Well, it's already proven in my previous testimony which related cases and showing the differential.

Exam. Dishman: Any further questions? Witness excused.

(Witness excused.)

Exam. Dishman: We will now take a short recess.

(Short recess taken.)

Exam. Dishman: The hearing will be resumed.

Mr. Maguire: The next witness will be John H. Hemphill.

* * * * * * *

[fol. 244] Mr. Maguire: Call Mr. Robert B. Taylor.

Robert B. Taylor was sworn and testified as follows:

Direct examination.

By Mr. Maguire:

Q. Mr. Taylor, where do you live?
A. Eugene, Oregon.
Q. And what is your business?
A. Wholesale lumber business.
Q. And with what lumber company are you connected?
A. Timberline Lumber Company.
Q. T-i-m-b-e-r-l-i-n-e, all one word?
A. That's correct.

[fol. 245] Q. In what capacity do you serve the Timberline Lumber Company?

A. I am a partner.

Q. A partner in the firm, and what are the activities of the Timberline Lumber Company? Are they lumber manufacturers or wholesalers or—

A. A wholesale firm in the strictest sense, inasmuch as they buy the lumber and take title and then sell it rather than trying to fit together a buy and sell, as a broker would.

Q. I see, and do you sell—there are two ways of selling, as I understand from the testimony in this case. One is on what they call firm sales and the other is handling transit cars. Does your activity predominate in either one of those fields or work in both of them?

A. We work in both of the fields. We do quite a large firm business, but we do in excess of 7000 cars a year transit.

Q. Could you give me the average volume of your firm business?

A. Firm business is probably 1200 cars a year.

Q. Now, are you familiar, generally, with what the subject of this proceeding is?

A. Yes, generally.

Q. I will call your attention to the fact that the Milwaukee seeks joint through rates with the SP&S System through Spokane to the same extent and with the same freedom of restriction as the SP&S now grants through Spokane to the Great Northern and the Northern Pacific. You are familiar with that, are you not?

[fol. 246] A. Yes.

Q. And have you come to any conclusion at to what, if in any manner at all, the operations, the proposed rates and the necessary through routes to accomplish them would be desirable in the interest of your company?

A. Well, we are primarily interested in serving our customers, and we have found in recent times a tendency toward buying in smaller and smaller quantities, and this particular proposal ill be very good in our case in a situation where we would stop over in the Dakotas a car to partly unload and then dump the rest or sell the rest in Chi-

cago or put it in one of our friendly yards there in Chicago or perhaps even east of Chicago.

Q. What, if any, difference in price would you receive from your sale in Dakota?

A. Well, naturally, the smaller the quantities, in many instances, the better, so you could actually obtain a premium price for that quantity which you stopped over in the Dakotas. I think it's generally true in the Dakotas, they are not the large distribution yards you find in the more thickly populated centers of the United States where you can put a carload of a particular item in the distribution center and they will distribute it to the various small users, but in the Dakotas, because of their relatively sparsely populated areas, they have just yards.

Q. I am going to call your attention to Exhibit No. 9 which is a map in this case and when I was discussing your testimony here, did I show you this map?

[fol. 247] A. Yes.

Q. And do you understand the markings on the map, that the red points indicate territory that cannot be reached through the existing rates via Spokane?

A. Yes.

Q. And that west of Mobridge on the Milwaukee, there are no rates except from Vernonia, Oregon?

A. Yes.

Q. You recall that. Well, now, when you would sell a part lot in the Dakotas, where would be the normal place that you would continue with the rest of the car, the normal place or area?

A. The normal place would be the Chicago area, I would say, or perhaps even east of there to Detroit, where there are large competitive centers that will take practically any commodity which you have.

Q. Are you generally familiar with the territory—strike that, please. Do you purchase lumber from mills located on the Oregon Electric among other sources?

A. Yes, sir.

Q. And from lumber mills located exclusively on the Oregon Electric?

A. Yes, sir.

Q. Do you also purchase from mills located on the Southern Pacific or at points which are common both to the Oregon Electric and the Southern Pacific?

[fol. 248] A. Yes, sir.

Q. And are you familiar, in a general way, as to the territory which you can cover or cannot cover by way of the route now existing, Southern Pacific, Union Pacific, Marengo, Milwaukee, as to what parts of the country you cannot reach, if there are any parts?

A. In a general way. However, we would check each specific point on each occasion with one of the railroads in Eugene as we don't hire a full-time traffic manager.

Q. Do you know whether, under the Southern Pacific, Union Pacific existing rates, you can go down into Chicago and divert east of Chicago through Chicago?

Mr. Rockwood: Excuse me—

The Witness: Yes, absolutely.

Mr. Rockwood: Via Marengo?

Mr. Maguire: The Marengo route.

The Witness: I am sorry. I believe you can.

By Mr. Maguire:

Q. Do you recall now on that Union Pacific routing whether east of Chicago there is provision for the across lake route—

Mr. Rockwood: Mr. Examiner—

Mr. Maguire: Wait a minute—

Exam. Dishman: Let him finish the question.

Mr. Maguire: I am going to do this, in this case: I am [fol. 249] going to withdraw the question for the moment—

Mr. Rockwood: I would think so.

Mr. Maguire: I am going, very frankly, to ask—this is going to be admittedly a legal question—

Mr. Rockwood: Legal question?

Mr. Maguire: Leading question, upon the grounds of your surprise, because I think it's only fair to remind this witness or to refresh his memory as to something he told me this morning, and I think the detail has slipped his mind.

Mr. Rockwood: May the record also show when the witness made his last answer, there was a vigorous shaking of the head by Mr. Engel sitting directly behind Mr. Maguire.

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record. Go ahead.

By Mr. Maguire:

Q. Now, Mr. Taylor, with regard to your last answer that you did have, to your recollection, free routing through Chicago on the Marengo, Union Pacific rates via the Milwaukee, in view of a discussion off the record in the presence of all parties, do you wish to qualify that answer as to whether or not you were certain about it?

A. Well, I am not certain about it because I have not personally read the tariffs on it, nor have I specifically asked any rate man the question. However,—

Q. I see.

[fol. 250] A. —I am taking a general discussion word for it.

Q. I see. Well, with that understanding, we will abandon that.

Mr. Maguire: You may cross examine.

Cross examination.

By Mr. Rockwood:

Q. Mr. Taylor, are you able to tell us whether, or rather are you able to tell us what limitations there are, if any, upon the use of a route from Southern Pacific mills, Southern Pacific, Union Pacific to Omaha and thence connecting carriers on beyond?

A. That's a very good route, and we use it quite often.

Q. Yes.

A. As a matter of fact, there are few limitations.

Q. What territory can you reach in Iowa, Wisconsin and Minnesota by that route, do you know?

A. I do not know.

Q. To what territory on the Milwaukee, if you know, in Minnesota, Iowa and Missouri and states east of there can you reach via a route SP&S, Oregon Electric, SP&S to Spokane and thence Great Northern, Northern Pacific to Minnesota Transfer, do you know?

A. I make no pretense of knowing anything about rates or routes. I do know certain instances where our sales have been handicapped, but your questions in regard to, does this apply to certain points or that sort of thing, I cannot answer that. You know the answer, and I don't.

[fol. 251] Q. You say your sales are handicapped?

A. That is correct.

Q. You find you cannot fill an order from a particular mill, so you proceed to place it with another mill, is that about it?

A. In our business, we buy the order first, remember, and then try to sell it.

Q. Yes.

A. So in doing that, we take a calculated risk. For example, in buying a car, if we could buy a car on a Southern Pacific point, knowing what we do about these cars originating on the SP&S, we would value that purchase better than a car originating on the SP&S because of the restricted possibilities of sales.

Q. Now, what about purchases from the Santiam Branch mills? You have made some point of the fact that there were limitations on rates from the Santiam Branch which did not apply to rates from other Oregon Electric mills. You are aware of that fact, are you?

A. That is correct. I didn't, I don't recall of having specifically mentioned the Santiam Branch.

Q. Mr. Maguire mentioned it to you.

A. However, the more possibilities we have, the better it's going to be to sell our lumber.

Q. And if the Santiam Branch were put on the same basis rate-wise as the rest of the SP&S System lines, you would like it?

A. A half apple is better than none at all, if that's what you mean.

[fol. 252] Q. As a matter of fact, in your business, you want wide open routes everywhere?

A. Yes, sir.

Q. That's what you are telling us now, as many wide open routes as you can lay your hands on?

A. Absolutely.

Q. And you like to have those routes available so you can start a car rolling and take plenty of time in transit to get it sold, is that right?

A. Let's not say, "plenty of time". We are quite anxious to sell that car the minute we have a deal on it and—

Q. Of course.

A. —and time is not as much an element as sales possibilities. The more sales possibilities we have, the quicker we are going to sell the car and quicker we are going to make our profit. We are looking for sales possibilities rather than just a delay of time.

Q. Well, do you find it sometimes to your advantage in these transit cars that the car be delayed or moved over possibly unduly circuitous routes?

A. The words "unduly circuitous" kind of bothers me.

Q. Scratch "unduly".

A. "Circuitous" bothers me, too. Scratch that one.

Q. No, just leave that one in.

A. There are occasions when delays are to our advan- [fol. 253] tage, regardless of the means by which the delay is accomplished. A circuitous route is not to our advantage at all and is not to anybody's advantage.

Q. If that's the only route that were available, the circuitous route would not be to your advantage, but do you ever find any advantage in using one route in preference to the other because of the circuity of the first?

A. If we could obtain the delay without the circuity, we would. We are not interested in getting the car off in some obscure point. We are interested in getting it where we can get at it as rapidly as possible once it's sold and get it to the customer.

Q. You do avail yourselves of some circuity, do you not, sometimes?

A. If you call a route Southern Pacific, Union Pacific to Omaha circuitous, yes.

Q. You ship over other routes rather than Southern Pacific, Union Pacific to Omaha, don't you?

A. Absolutely.

Q. Do you ever avail yourself of some circuity in the routing which is open?

A. We have not done so in the past six months.

Q. Did you before the last six months?

A. There have been times, yes.

Q. And that practice, of course, holds up the unloading of the car?

[fol. 254] A. That is not true.

Q. If it takes more time in transit, does it not extend the period that the lading is in the car?

A. No, that is not necessarily borne out by what we have been able to find out.

Q. Not necessarily borne out, but has that occurred?

Mr. Maguire: Before the witness answers, I have been unable, Mr. Examiner, to see the materiality of this line of questioning to the issues in the case, the question of circuity of routes, but have thought it may have been just a passing phase of counsel's cross examination, but since he seems inclined to continue it, I object to its materiality unless counsel wishes to explain.

Exam. Dishman: What is the purpose?

Mr. Rockwood: I am trying to find out something about this matter of rolling cars in transit which counsel stressed in the direct examination of this witness. I am trying to find out how it operates.

Mr. Maguire: The question of how it operates does not involve the question of circuitous routes. The method of selling cars in transit can be covered, but I fail to see the necessity of long diversions into the question of circuitous routes and delays.

Exam. Dishman: If you think it is material, continue.

Mr. Rockwood: I do.

[fol. 255] The Witness: May I ask a question?

Mr. Rockwood: You may ask it, but I am not sure I will answer it.

The Witness: Please define a circuitous route. I am not quite sure of myself in my answer.

By Mr. Rockwood:

Q. Maybe that is rather indefinite.

A. Would you say it is the one with the longest miles?

Q. That is more circuitous than a shorter mileage. Let me point out what I am suggesting. We'll say that the Southern Pacific, Union Pacific route direct to Omaha is not circuitous. In some instances, do you purposely, or prior to the last six months, did you purposely select a route over which a through rate applied that would take longer in transit than the Southern Pacific-Omaha route?

A. I believe we did ship some cars Southern Pacific via El Paso and that way.

Q. To slow them up?

A. Not necessarily. We were solicited by the Southern Pacific for that route, and that was the reason.

Q. To eliminate the Union Pacific?

A. They did not solicit it on that basis. They solicited on the basis of service, sir.

Q. They did that, and one of the points they made was that it would take a little more time in transit than the direct route of the Union Pacific to Omaha?

A. That was not a basic point at the time.

[fol. 256] Q. Was that one of your considerations in using that route?

A. One of our considerations was not that it was a circuitous route but perhaps it did take longer than the other route we were using at the time.

Q. Has your company ever made a request of any official of the SP&S to give through routes on lumber back into Milwaukee territory paralleling the present request of the Milwaukee?

A. Officially, no. Most of the time, because of the seemingly tedious and difficulty in changing things as they are, we have accepted the various conditions we found in the tariffs, even though we didn't like them. We have accepted them, but we have made some indirect protests, I believe.

Q. To whom?

A. I believe we protested. We have not specifically asked for this proposal if that will answer that question.

Mr. Rockwood: That is all.

By Mr. Torinus:

Q. How many shipments in the last 12 months, Mr. Taylor, did you make wherein the cars were stopped to part unload between origin and destination?

A: Of course, I do not have that figure, but in the last 12 months I would judge 2000. That would be an estimate.

Q. I understood you to say you shipped only 1200 cars a year on which you had a firm order, is that right?

A. That is correct.

Q. Are some of these roller cars stopped to part unload?

[fol. 257] A. Yes, sir.

Q. In what territory is this part unloading privilege availed of, generally speaking?

A. That is a question I cannot specifically answer because our sales are throughout the United States, and I have not kept track of any specific tabulations on that.

Q. Well, could you tell us generally in what territory?

A. I would say, to make a generalization, it would have to be quite vague, and I would say that it happened from Denver east.

Q. Now, I understand that you did not make any formal request of officials of the SP&S for additional through routes prior to this hearing?

A. That is correct.

Q. Or of any other railroad in the Pacific Northwest?

A. That is correct.

Q. When did you first learn about this case, Mr. Taylor?

A. The first time I learned of it, believe it or not, was from the SP&S. Mr. Meyers came in and wanted to know if I was going to testify.

Q. When was that?

A. I do not remember the specific date. Oh, I will take that back—the first time I learned of it was Mr. Beckwith called me and he had seen one of the Milwaukee men in my office and he called and wanted to know if they had asked me to testify, and on that particular call, as I recall [fol. 258] it, the Milwaukee had not asked me.

Mr. Torinus: I have no further questions.

Mr. Maguire: I haven't any either. Thank you very much, Mr. Taylor.

Exam. Dishman: Witness excused.

(Witness excused.)

Mr. Lutterman: Call Mr. Davin, please.

VIRGIL DAVIN was sworn and testified as follows:

Direct examination.

By Mr. Lutterman:

Q. Will you please state your name and where you reside, Mr. Davin?

A. Virgil Davin, Walla Walla, Washington.

Q. What is your occupation?

A. I am in the occupation of livestock raising, principally sheep.

Q. And where is your principal operation, that is, the home site of your principal operation?

A. At Washtucna, Washington.

Q. And, roughly, where is that in the State of Washington?

A. Washtucna is about 60 miles south of Spokane, I believe.

Q. Are you located on some railroad at that point?

A. Well, not directly on the ranch. I am connected with some railroads on the ranch, but the SP&S does not border any of my property.

[fol. 259] Q. But your operation is served by the SP&S Railroad, is that correct?

A. Yes.

Q. What is the nature of your operation, that is, how do you go about being in the sheep business there?

A. Well, you have a brood stock termed as ewes which you breed from which you raise lambs. They require different pastures, and it's a transitory occupation. You have to follow pasture as it is required, necessarily meaning that you have a winter range and a summer range.

Q. Where, in your operation, is your winter range located?

A. Sixteen miles southwest of Washtucna.

Q. It's in the vicinity of your base or home ranch, is that correct?

A. That's correct.

Q. And ordinarily, are your lambs born in that area?

A. Yes.

Q. And for what period of time can you keep them in that immediate area and keep the ewes and lambs in grass or feed?

A. Well, in that particular area, the feed starts drying up about the first of May and it's almost imperative that we leave that area not later than the 15th of May.

Q. And you then have to find what you call summer pasture for them, is that correct?

A. Yes.

Q. And will you state whether or not there is any [fol. 260] pasture of that character, desirable pasture of that character in the State of Idaho?

A. There is.

Q. And in what areas have you summer grazed in Idaho?

A. Well, I have principally grazed in the St. Maries, Idaho area up the St. Joe River and up the St. Maries River.

Q. That's in an area which is served exclusively by the Milwaukee Railroad, is that correct?

A. That's correct.

Q. What kind of lands, ordinarily, are available for that purpose?

A. It's principally mountain range.

Q. And some of the Government forest lands?

A. Yes. It's usually taken on a lease basis from the National Forest.

Q. State whether or not there is some competition with respect to lands of that character that are available for sheep growers.

A. Well, of course, the last few years the attitude of the National Forest Service, they have been curtailing the numbers of livestock upon the national reserves, and it's come down to a point where there is quite a bit of competition among the different growers to secure desirable range.

Q. Will you state whether or not there is a range area in the vicinity of Pókono in Idaho which you have used and which is desirable for that purpose?

A. There is.

[fol. 261] Q. And that is a station on the main line of the Milwaukee, is that correct?

A. Yes.

Q. Will you state whether or not you have summer grazed your sheep and lambs in that area?

A. I have.

Mr. Rockwood: Was that P-o-k-o-n-o, am I correct?

The Witness: I think that's right.

Mr. Lutterman: I think it has some connection with the Indians, I am not sure.

By Mr. Lutterman:

Q. For what period of time, ordinarily, do you graze your ewes and sheep in the summer grazing areas?

A. The National Forest regulations require that we do not enter before the first of June and leave by the first of September.

Q. And at that time, how do you dispose of your lambs, or what is your operation from there on?

A. After we have gone into the National Forest, it's usually about the 15th of August, between the 15th of August, and I would say the first of September when the lambs mature to a point where they are ready for market. At that time we try to develop a market for them to be sold.

Q. Where, ordinarily, is your best market area for your lambs?

A. Of course, the recognized market is ultimately Chicago.

Q. And ordinarily, how many sheep do you market every year, Mr. Davin?

[fol. 262] A. This year I will market about 2500.

Q. And that in carloads, what does that run approximately, ten cars?

A. 250 to a car, approximately 10 cars.

Q. When you bring your sheep and lambs from your home ranch at Washtucna, how do you transport them, for instance, to Pokono or to that area?

A. We trail them to the nearest loading point, which is Washtucna.

Q. On the SP&S?

A. Which is on the SP&S which has the facilities for loading. From there they are conveyed by rail to the summer transit point, which in this case, is Pokono.

Q. And then in the fall when you get ready to market, what do you do, send them on directly from there?

A. Reload them on the trains and ship them to Chicago.

Q. Now, it's been testified in this proceeding, Mr. Davin, by Mr. Engel who is a representative of the Milwaukee Railroad, that there are no through rates with the SP&S and the Milwaukee via Spokane which provide you with a through rate from your business ranch at Washtucna to Chicago with the right to stop the car in transit on a local point of the Milwaukee line like Pokono for grazing. Are you familiar with that in general?

A. Yes.

Q. And it has been also testified by Mr. Engel that conversely no such a rate would apply through Spokane via [fol. 263] the Northern Pacific, Great Northern beyond with the privilege to stop and graze in transit at local points on those lines and with your final destination to Chicago. Are you familiar with that?

A. I am.

Q. And will you state whether or not there are certain areas, grazing areas in Idaho or Montana which would be at local points on either the Northern Pacific or Great Northern?

A. Yes, there are a lot of points.

Q. And are you familiar, that is, personally, with the manner in which you had to handle your shipments from Washtucna to Pokono and from thence to Chicago, that is, whether you had a joint through rate or are required to pay a rate to Pokono and then a separate rate, combination rate from Pokono to Chicago?

A. Well, of course, the inbound rate is determined on a mileage basis, and then in order to pick up your billings,

it is necessary to bill from the inbound point. In other words, when I rebill, it would be necessary for me to rebill out of Pokono to Chicago.

Q. So you don't have a through billing from Washtucna to Pokono to Chicago with the transit at Pokono or that area for grazing, is that correct?

A. That's correct.

Q. Do you know, roughly, what difference there is in that combination rate over the through rate which would apply, for instance, via either the Northern Pacific or [fol. 264] Great Northern to Chicago?

A. Well, I believe the rate from Washtucna to Chicago is the same on all three lines. If you could get a through rate SP&S, the SP&S, Chicago, the way I am forced to ship, it means that I am obliged to pay a short rate either from Washtucna to Spokane local SP&S and then rebill my cars on a transit rate from Spokane to Chicago. That just about offsets the difference in pay in the local inbound freight and rebilling out of Pokono instead of Spokane, as closely as I can determine from the figures which I have been able to receive from the different rate clerks on the SP&S and upon the Milwaukee, and that difference amounts to about $40.00 a car.

Q. And then, will you state whether or not if these joint rates from local points on the SP&S to and through local points on the Milwaukee via Spokane with the right to stop and graze in transit and final destination to Chicago, if that would be of any benefit to you?

A. They would, to the amount of about $40.00 a car, as I just stated.

Q. To the extent that other sheep growers who may be at local points or graze at other points which enjoy the through rate, you would be prejudiced to that extent?

Mr. Rockwood: Just a moment. I object to that question as going to Section 3 (1).

Exam. Dishman: That calls for a conclusion. Do you [fol. 265] understand what he means by prejudice?

The Witness: Yes, I do. I wouldn't call it prejudice.

Mr. Rockwood: Just a moment. I have an objection.

Exam. Dishman: I will let the witness answer if he knows. Of course, you have a standing objection. Go ahead and explain what effect it would have.

The Witness: Well, I don't just see how the word "prejudice" would fit it. I would be economically worse off by $40.00 a car than comparable men who have through rates on the SP&S, Great Northern and Northern Pacific.

Mr. Lutterman: That answers my question. I think that's all the questions I have.

Cross examination.

By Mr. Rockwood:

Q. Are there extensive grazing areas in Montana along the lines of the Great Northern and Northern Pacific?

A. I don't know how extensive they are on the Northern Pacific, but on the Great Northern they are quite extensive.

Q. There is a big area in the Blackfoot Indian reservation just east of Glacier Park which is used for sheep grazing in transit?

A. That's right.

Q. Now, are there any sheep raisers located along the Milwaukee line which runs in the vicinity of Washtucna? I was trying to find it on the map.

A. The Milwaukee does not run very close to Washtucna.

[fol. 266] Q. How far from Washtucna is the Milwaukee line to the north?

A. Paxton would be the closest point, which is about 30 miles north of Washtucna.

Q. What is the station?

A. Paxton.

Q. Are there any people that are engaged in business similar to yours at Paxton and in that vicinity?

A. McGregor would probably be about the closest.

Q. They operate in a manner similar to the way you operate?

A. Yes.

Q. And if they wish to ship out by rail over the Milwaukee to graze at the Blackfoot Indian reservation on

the Great Northern, they would be faced with exactly the same rate situation in which you find yourself in originating on the SP&S and grazing on the Milwaukee, wouldn't they?

A. You are going on the assumption, I believe—you asked who grazed such as I do and I said Mr. McGregor. He grazes in Idaho. There are none in that line in my vicinity who are on the Milwaukee who graze in the Blackfoot Indian reservation.

Q. Where does he graze in Idaho, on the Milwaukee?

A. I believe he's on a branch of the Milwaukee. I am not sure.

Q. Well, is there grazing land in Idaho on the Northern Pacific exclusively, or Great Northern?

A. There are points where there are exclusive grazing lands in the vicinity of those two lines.

[fol. 267] Q. Well, the fact is that if your Mr. McGregor attempted to graze sheep along the Northern Pacific or Great Northern in Idaho and Montana, he would be faced with the same penalty of $40.00 per car that you are talking about, isn't that right?

Mr. Lutterman: Let me place an objection. You are assuming something which certainly isn't in the record, Mr. Rockwood, and I am not so sure it's true, and you are asking a man here to assume that the rates, assuming, of course, if the rates do work that way, it's obvious that's the answer, but there is nothing in the record to show that the rates work that way. You are assuming they do. He hasn't qualified himself as to knowing whether they do or not, so I certainly feel that it's an improper and objectionable question.

Exam. Dishman: Well, does the witness know anything about that situation?

The Witness: It so happens Mr. McGregor is served by the Union Pacific and all of his shipments, I believe, go out on the Union Pacific. You were going on assumptions, and they covered a broad field.

By Mr. Rockwood:

Q. Well, do you know of any fields along the Milwaukee of sheep that graze in transit in Montana and Idaho in the Washington territory who are obliged to ship out on the Milwaukee, who have Milwaukee service only?

A. I don't believe I know of one that does.

Q. If this Mr. McGregor, who ships out over the Union [fol. 268] Pacific and, you say, now grazes at a point along the Union Pacific, wished to graze along the Great Northern or Northern Pacific, or, as a matter of fact, along the Milwaukee, he would be faced with the same $40.00 penalty per car you talk about, would he not?

Mr. Lutterman: Just a moment. I object again. In the first place, the witness has answered your question. He says he does not do it that way, Mr. Rockwood. Now, in the second place, you are assuming a rate situation which I understand is incorrect that the joint rates do apply—since apparently we, you and I, are going to testify here. The joint rates do apply via the Union Pacific.

Exam. Dishman: Just a moment. I imagine the witness—

Mr. Lutterman: The question is unfair to the witness.

Exam. Dishman: Do you have any knowledge of that situation?

The Witness: No, I don't.

Exam. Dishman: I was just under the impression that the witness wouldn't know.

By Mr. Rockwood:

Q. Well, Mr. Davin, if you don't know the rate situation with which your competitors in eastern Washington who must ship over some line other than the SP&S are faced, how can you say that you are at a disadvantage in competing with them, if you don't know what their rate situation is?

A. I don't believe we are competing against each other.

Mr. Rockwood: That is all.

[fol. 269] By Mr. Torinus:

Q. Did you make known your problems with respect to the rate situation to officials of the SP&S prior to the time this complaint was filed?

A. I have no knowledge of when this complaint was filed, sir.

Q. Have you ever discussed your rate problems with any official of the SP&S?

A. I believe I have.

Q. With whom?

A. I think it was Mr. Henderschott.

Q. You had a conversation with Mr. Henderschott about June of this year, is that correct, some time in June of this year?

A. Yes, I did.

Q. He is a local agent of the SP&S at Spokane?

A. He is out of Spokane, yes.

Q. He is an agent. I guess his title is General Agent of the SP&S out of Spokane.

A. I don't know his exact capacity, but he takes care of traffic movements, especially on livestock.

Q. Have you ever made a request of Mr. Ehlen, traffic official of the SP&S in Portland, for the establishment of joint through rates on livestock or on sheep specifically, of which you are now complaining?

A. I never have.

Q. The lack of which you are now complaining about?

A. I never have.

[fol. 270] Mr. Torinus: No further questions.

Redirect examination.

By Mr. Lutterman:

Q. You don't know Mr. Ehlen, I take it?

A. I don't believe I do.

Q. And the person that calls on you in connection with SP&S matters is this other man you speak of, their representative in your area, is that correct?

A. Yes.

Mr. Lutterman: That is all.

Recross examination.

By Mr. Rockwood:

Q. So there will be no misunderstanding, did you request Mr. Henderschott at any time prior to this conversation along in June for these feeding and transit rates over the Milwaukee?

A. I don't believe I requested him. Last year was the first year I had occasion to ship over the SP&S going into this particular area in Idaho and it really didn't occur to me.

Mr. Rockwood: That's all.
Mr. Lutterman: That is all.
Exam. Dishman: Witness excused.

(Witness excused.)

Exam. Dishman: We will recess for lunch until 2:00 o'clock.

(Whereupon, at 12:30 p. m., a recess was taken until 2:00 p.m. of the same day.)

[fol. 271] Afternoon Session 2:00 p. m.

Exam. Dishman: The hearing will come to order, please.
Mr. Lutterman: Mr. Thompson, please.

Lowell Thompson was sworn and testified as follows:

Direct examination.

By Mr. Lutterman:

Q. State your full name, Mr. Thompson.
A. Lowell Thompson.
Q. Where do you reside?
A. Spokane, Washington.
Q. And what is the nature of your business?
A. Idaho garnet abrasive mining business.

Mr. Rockwood: What abrasive?
The Witness: Garnet abrasive.

By Mr. Lutterman:

Q. Where is that place of business located?

A. Fernwood, Idaho.

Q. And that's a local point on the Milwaukee line, is it?

A. Yes.

Q. And what is the nature of the product which you mine or manufacture?

A. I mine and process a sandblasting product.

Q. And it is used principally for what purposes?

A. My product is used mainly for sandblasting.

Q. And in that connection—I think I understand and I assume Mr. Rockwood does—but just for the record, gen- [fol. 272] erally what do you mean by sandblasting? What is it used on? What do they sandblast with it?

A. Well, I sell to all the aircraft plants, Lockheed, Douglas, Boeing, U. S. Navy at Mare Island, San Diego, Mobase, Mt. Ranier Ordnance Depot, McClelland Field. At those installations it is used as a sandblasting agent replacing aluminum oxide, silica or whatever was previously used.

Q. So that, insofar as the purposes for which it is used, it is competitive with other elements used for so-called sandblasting?

A. Yes, it definitely is.

Q. Approximately what is your annual production?

A. Approximately 5000 tons.

Q. Now, will you state whether or not there is a potential market for your product in the Astoria region and if so, please fully explain.

A. Yes, there is a definite market at Tongue Point Naval Station. A short time back they put out a bid for garnet abrasive blasting grit, a large bit, 2050 tons, and I bid on that on the particular rates that I had been given. I did not get the bid.

Q. And in connection with that bid, did you make some inquiry as to the rates which were available to you at that time from your plant in Idaho to Astoria?

A. Yes, I did.

Q. What did you find out concerning the rate situation at [fol. 273] that time?

A. At that time there was no class rate. There was no specific commodity rate for garnet from Portland to Astoria. Consequently, the rates quoted me were 30 cents to Portland and 30 cents from Portland to Astoria, 60 cents total.

Q. Do you know what line that is, what railroad line the delivery point was located on?

A. No, I don't, or I didn't at that time.

Q. Later, you do know?

A. I do now. At that time I didn't.

Q. What line is that?

A. That's the SP&S.

Q. State whether or not you ascertained at that time there was a joint through rate available for your product from your point of production to the destination at Tongue Point near Astoria?

A. Would you repeat that again?

Q. Did you find out whether or not at that time there was a joint through rate available to you to Tongue Point?

A. Well, at that time there was no—it was a joint rate of the 60 cents, as I stated.

Q. Combination rate?

A. Combination rate.

Q. Do you also ship to Puget Sound?

A. Yes.

Q. And do you know what your rate is there?

[fol. 274] A. Twenty-six cents to Seattle and Tacoma.

Q. And you are, in general, familiar with the application of the Complainant here, requesting a full line of joint through rates?

A. Yes.

Q. Via Spokane with the SP&S?

A. Yes.

Q. And what is your position with respect to that request insofar as markets which you seek to reach that are local to the SP&S?

A. Well, I am naturally in favor of it. I want my commodity to reach Tongue Point Naval Station the next time they bid, and it will, I hope.

Q. With the rate, the existing rate which was this combination rate you spoke of over Portland, would you be able

to compete with other sources of materials used for the same purposes on a competitive basis?

A. I feel that I could, yes.

Q. I mean, with the higher combination rate?

A. No. Evidently the per unit cost was too high.

Q. Based on this—

A. That was just slightly too high.

Exam. Dishman: Did you state your position with your company and what your duties are?

The Witness: I own it. I am general manager, and I own it.

[fol. 275] Mr. Lutterman: You may cross examine.

Cross examination.

By Mr. Rockwood:

Q. What is this product?

A. It's garnet, a semi-precious stone.

Q. What do you do with it? Do you pulverize it or what?

A. I mine it, process it and pulverize it, screen it and bag it.

Q. How much is that product worth at your mine?

A. Approximately $67.00 or $65.00 a ton.

Q. Who got the Astoria, the Tongue Point bid that you talk about?

A. A type of garnet from Upper Chinook, California, a bishop type garnet which is really not a garnet, but they got the bid.

Q. It came within the specifications of the Navy's invitation?

A. It came within the specifications, which were very loose, by the way.

Q. What rate does your competitor in northern California have to Tongue Point?

A. Well, I would like to take exception to "competitor". In this particular case, he was a competitor. In California, he has never competed against Idaho garnet abrasive, never taken a bid, never been a competitor in California. This was—

Q. In Oregon?

A. In California are the main users, so actually he is not a competitor. In this particular case, he was, and I think a quick bill of goods was sold in the deal. That's why he got in there.

[fol. 276] Q. What do you mean, a quick bill of goods?

A. Actually—

Q. He was guilty of sharp practice or somebody else was?

A. I don't say any sharp practice. Someone was told that garnet was good, and actually, bishop garnet will not cost-wise compete with silica sand.

Q. Do you think you have a better product?

A. Definitely.

Q. He thinks he has a pretty good product, I suppose?

A. I won't go into that because it is of no purpose.

Q. What is his point of production in northern California?

A. Above Bishop, Upper Chinook, California.

Q. What railroad?

A. I couldn't tell you.

Q. Do you know what freight rate he had?

A. No.

Q. Can you even tell us whether his freight rate was higher or lower than the 60 cent combination rate you talk about?

A. I couldn't tell you that.

Q. So you don't know it was the freight rate in and of itself that made it impossible for you to get the bid?

A. I feel that it is because in purchasing for sandblasting, it's all based on unit cost. In other words, my product, although the cost is possibly three times higher than Ottowa silica laid down at Tongue Point, it will beat it cost-wise by, [fol. 277] well, it will definitely beat it cost-wise by a few points.

Q. Because it is a better product?

A. Because of unit cost.

Q. Unit cost where?

A. In other words, the ability of garnet to last six times longer, the last-ability, the lower movement into the area, the least residue to be removed and other factors. They call it unit cost.

Q. You mean unit cost in the use of the material on the job?

A. Yes.

Q. But you cannot tell us what effect the freight rate as such had on the bid?

A. I can't, except that I feel it definitely had a bearing.

Q. You feel that, but you can't be positive because you don't know what the freight rates were?

A. No. I can answer that in another way. I recently applied for and secured lower freight rates to California. The balance of this unit cost we spoke of was so close that certain of my larger users were going to go to silica sand and the freight rates were reduced, which was just enough.

Q. Did you ever apply to the North Pacific Coast Freight Bureau docket for a commodity rate from Fernwood to Astoria on your product?

A. At the time the bid was made.

Q. They had not had an opportunity to act on it?

[fol. 278] A. Not until it was too late.

Q. Have they acted on it?

A. Yes.

Q. Did they give you a rate?

A. Gave me a rate of 36 cents.

Q. Over what rate, or rather, over what route does that 36 cent rate apply?

A. Over what?

Q. Route.

A. Route?

Q. Yes.

A. SP&S, I imagine, Milwaukee, SP&S straight on through.

Q. Well, is that via Spokane as a junction or via Portland as a junction?

A. I couldn't tell you that.

Q. The 30 cent rate which applied to Portland was a combination over what roads, do you know?

A. That would be Milwaukee and SP&S, I should imagine.

Q. You should imagine. Are you quite sure it wasn't Milwaukee, Union Pacific to Portland?

A. I couldn't answer that.

Q. So that you don't know what the participating carriers were in the routes which were effective prior to the request you made and you don't know what the precise routing is under the 36 cent rate that you now have?

[fol. 279] A. No.

Q. When were you approached by representatives of the Milwaukee to appear and testify in this case?

A. About one month ago.

Q. Was that before or after you got the 36 cent rate?

A. That was after I got the 36 cent rate.

Q. So that, actually, the situation today and the situation at the time you were invited by the Milwaukee to appear here was not the same as it was when you made this unsuccessful bid on the basis of a 60 cent rate? That's correct, isn't it?

A. Would you repeat that?

Mr. Lutterman: I don't understand the question myself.

By Mr. Rockwood:

Q. When was the unsuccessful bid made?

A. Approximately five or six months ago.

Q. All right, when did you apply or when did you get action on your application for a commodity rate right straight through to Tongue Point? When did you get that rate in effect?

A. It must have been a couple of months ago.

Q. And then a month later, or approximately a month later, you were invited to appear in behalf of the Milwaukee?

A. Yes.

Q. You have got now a joint through rate with the Milwaukee to Tongue Point, haven't you? You may not like it, may think it's too high, but you have a joint rate?

A. I will answer this way: I think it should be the same [fol. 280] as Seattle and Tacoma and other commodities.

Q. You don't like the level of the rate but you have got a joint through rate?

A. Yes.

Q. Could you get any more if the Milwaukee were successful in this case than you now have, a joint through rate?

A. It would probably be 26 cents. It should be.

Q. As a result of this case, do you think the Commission in this case is going to fix the rate at 26 cents?

A. Most commodities coming from Spokane to Seattle, Tacoma or Portland enjoy the same rate.

Q. You think the Milwaukee in this case, as Complainant, without the Union Pacific being a party to the case, can get you a 26 cent rate? You know the Union Pacific is not in this case at all?

A. That's true.

Q. No order can be made in this case which will require the Union Pacific to join in a 26 cent rate, is there, so far as you know?

A. So far as I know, all I know is, in general, commodities from Spokane, as I said before, to Seattle, Tacoma and Portland have the same rate.

Q. Is that true as to Astoria?

A. Astoria products should be tied into that.

Q. It should be, but is it? There is a parity of rates be-
[fol. 281] tween Puget Sound and Portland in many instances. Is there a parity between Puget Sound and Astoria?

A. I can't answer that.

Q. You think there should be?

A. I think there should be.

Mr. Rockwood: That's all.

Redirect examination.

By Mr. Lutterman:

Q. You spoke of their giving you this 26 cents. Did they actually ever publish it for you?

A. Which 26 cents?

Q. Pardon me, 36.

A. No, it was never published.

Q. So that, as a matter of fact, you don't have the rate then now?

A. No. I was notified if I could definitely have a movement that then they would publish that rate, but I don't have the rate yet.

Q. So the only rate you presently have is this combination rate which you spoke of?

A. That's true.

Recross examination.

By Mr. Rockwood:

Q. I understand you have been assured, if a movement develops, you can have the 36 cent rate?

A. That's true.

Q. And if you made a bid again on this garnet abrasive [fol. 282] for use at Tongue Point, you would bid on the basis of 36 cents, the rate?

A. I would, but I would again get substantiation before I bid. I would want to be reassured.

Q. If that's not a reasonable rate, I suggest you file a complaint with the Commission yourself and enjoin the Union Pacific, but I can't see—

Mr. Lutterman: I don't think this is exactly the place for free legal advice.

Mr. Rockwood: It won't be free, I can assure you, but will you tell me how in the world in this case, where the Union Pacific isn't a party to the complaint, you hope to get an order requiring the Union Pacific to—

Mr. Lutterman: I think he is being argumentative with the witness.

Exam. Dishman: I think it is all right for the witness to answer.

By Mr. Rockwood:

Q. Can you conceive of relief in this case in which the Union Pacific isn't a party, to get a 26 cent rate to Astoria?

Mr. Maguire: I think that is calling for what would ordinarily be an expert opinion. Until he is qualified as a rate expert and an expert on procedure before the Commission, I believe this is a lot of waste motion.

Exam. Dishman: Well, the witness has talked at con- [fol. 283] siderable length about this rate and the rate he thought should be in effect, so do you have any opinions regarding the matter covered by his question?

The Witness: No. I haven't.

Mr. Rockwood: That's all.

Redirect examination.

By Mr. Lutterman:

Q. Mr. Thompson, if, as a result of this proceeding, you were able to obtain a joint through rate via Spokane between the Milwaukee and the SP&S, would that be of some benefit to you?

A. Definitely, it would.

Recross examination.

By Mr. Rockwood:

Q. Would it be of any more benefit to you than a rate from Idaho to Marengo—Do you know where Marengo is? It's on the Milwaukee just west of Spokane.

A. I know approximately.

Q. Would it be any better than a rate Milwaukee to Marengo, Union Pacific, Portland, SP&S Tongue Point?

A. That I can't answer.

Mr. Rockwood: That is all.

Mr. Lutterman: That is all.

Exam. Dishman: Witness excused.

(Witness excused.)

Mr. Lutterman: Mr. Ruddick.

Eustace W. Ruddick was sworn and testified as follows:

[fol. 284] Direct examination.

By Mr. Lutterman:

Q. Will you please state your name?

A. Eustace W. Ruddick.

Q. Where do you live, Mr. Ruddick?

A. Tacoma.

Q. What is your business?

A. Wholesale lumber, plywood and mill work.

Q. What is the name of your company?

A. Pacific Mutual Door Company.

Q. What is your position in connection with the company?

A. West Coast Manager.

Q. And your offices are located where?

A. General office in Tacoma.

Q. What is the nature of your business, in detail?

A. About equally divided between specialization, say, specialization on the basis of buying lumber and selling it after it's bought and the other 50 per cent on specific orders from distributors, retail lumber dealers, industrials, plus five jobber warehouses owned by our company.

Q. In general, you are what is known as a lumber wholesaler, is that correct?

A. Not quite, inasmuch as we operate under contract certain manufacturing facilities, and we also have five jobbers, distribution warehouses in St. Paul, Chicago, Kansas City, Baltimore and Elizabeth, New Jersey.

[fol. 285] Q. And these jobber warehouses you speak of, what do they handle, general lumber?

A. Primarily plywood and mill work.

Q. Lumber and lumber products, for example?

A. Yes.

Q. Where is your source of supply insofar as the Pacific Coast is concerned?

A. Our sources of supply range all the way from Turlock, California northward to Vancouver.

Mr. Rockwood: Vancouver, B. C. or Washington?

The Witness: B. C. We are primarily, let me say, heavier on the pine side of things, Prineville and Spokane areas than we are in the fir.

By Mr. Lutterman:

Q. I take it then that a portion, as least, of the source of supply is in the western part of Oregon, is that correct?

A. Yes.

Q. And in that connection, do you obtain any of your supplies from mills or producers in Oregon which are located on the SP&S or part of the SP&S System, the Oregon Electric?

A. Yes, sir.

Q. And in what areas would that be from?

A. Well, we, for a number of years, handled all the distribution of the APMI mill out of the Eugene area. We now continue to do quite a good deal of plywood out of that area, [fol. 286] as well as lumber.

Q. Do you use any producers in the Astoria area?

A. Yes, we ship plywood out of Astoria.

Q. What is your area, what is the area, then, that you market in?

A. We market nationally. Our volume is not as large, roughly, 1200 to 1500 cars a year.

Q. And of these cars, are some of them sent as what has been defined as transit cars?

A. We ship some transit business, yes.

Q. And what is the other type of business you have?

A. The other type of business is firm business, both to our own warehouses and on specific orders from direct customers and in combination, a lot are in combination where we will have a direct car customer buying in the same car as one of our own eastern warehouses.

Q. Showing you what has been identified as Exhibit No. 9, this is a map showing the lines of the Milwaukee and points local and also in the left-hand insert, the lines of the SP&S Southern Pacific System—

Mr. Rockwood: SP&S System.

Mr. Lutterman: Pardon me, SP&S System.

By Mr. Lutterman:

Q. Can you state whether or not you market in, let's take the area east of the Montana border, in North or South Dakota?

[fol. 287] A. Yes. Our market begins in the Dakotas and runs on eastward and runs south from there. We do nothing in Montana except a few plywood shipments out of our mill in Olympia.

Q. But your market commences, in other words, roughly at the North and South Dakota western borders?

A. Yes, sir.

Q. In your business, that is, for instance, on the products which you sell on a firm basis, can you state whether or not you have occasion to stop such cars for partial unloading?

A. Well, in the type of business we carry on wherein we are holding open the services of our company to any retail lumber dealer located anywhere, it's very difficult for us to say we cannot take care of you, Mr. Jones, in such and such a place. We have the problem of taking care of our warehouses, which oftentimes places a load on our purchasing office in Tacoma of picking up a part car wherever we may pick that car up, wherever it may be available and putting with it something to take care of one of our dealer customers.

In fact, oftentimes our own warehouse people in St. Paul and in Chicago will solicit such business and look unto us to supply that order. We have very little chance or opportunity of saying, we have to do it this way or that way. The car is sold when we put it together. That's one of our functions in the company.

Q. With respect to the cars which you might sell in transit [fol. 288] or start in transit for sale while in transit, will you state whether or not the privilege of diversion is important or necessary in connection with your movement of such a car?

A. We think it's very important. We think that the level of the present freight rates on lumber are at a point where we should be entitled to enjoy a free market wherever that customer may be, and it is difficult for us to tell when a mill calls us and says, we have an accumulation of so and so on hand, and I had it as recently as this morning when my office called and said, there is so and so at this mill. I said, buy it and ship it. I don't know where that car is going to sell. I think it's a good buy, and we have to help the mill move the material, but I can't tell where it's going to move to.

Q. Mr. Ruddick, it has been testified in this proceeding that, generally speaking, the rates, that there are no joint through rates from origins on the SP&S System shown in the upper left-hand corner to any local points on the Milwaukee west of Mobridge with the exception of the little branch which serves Vernonia, where there are joint through rates to that portion of the Milwaukee line shown in green west of Mobridge.

The testimony further shows that there are joint through rates from origins on the SP&S shown in yellow to destinations, that is, via the Milwaukee Railroad at Spokane and joint through rates with the Milwaukee Railroad via Spokane to destinations shown in yellow on the map, but that such joint through rates do not afford a full line of [fol. 289] transit and diversion privileges, nor do they apply to those points shown in red on the map.

Now, will you state whether or not, if joint rates were, as a result of this proceeding, ordered between the SP&S System and the Milwaukee via Spokane, which would apply generally on the lines of the Milwaukee east of Spokane and without restriction with respect to transit or diversion, whether or not this would be of benefit to you and your business?

A. Very definitely. The margin of the wholesaler has been shrinking for the past year and a half, two years, and there must be no restrictions on the lumber wholesaler, in our opinion. We are against anything that is going to restrict the activity of the west coast wholesaler, such as ourselves, plus the west coast purchasing office taking care of the requirements of specific warehouses, anything which will restrict the free trade or buying from any source which we may have available on the west coast to any customer through our sales staff.

We cannot possibly afford, gentlemen, to be running up more costs, checking telephones, checking mill sources, and we feel in our company that with the competition which we are facing, we must have this thing opened up, not only for transit cars where we are working with our mill, but we must get our stop-over cars. We are faced with competition— I won't mention the names of the companies— but it's being tougher and tougher every day, and certainly, we feel strongly that if you are going to charge us the [fol. 290] freight rates which you are, then for heaven's sake, let us market our product from any mill source which we have to any customer we may be fortunate enough to have.

Q. Would a prescription of such joint through rates help you in your marketing area, which you described and which, roughly, you say—

A. Very definitely one of the finest markets we have is this section going north from Chicago.

Mr. Rockwood: Wait a minute. You made a pass at the map and I couldn't tell what territory you were referring to.

By Mr. Lutterman:

Q. I am speaking now, generally, of the territory you earlier mentioned which includes everything east of the western borders of North and South Dakota, as shown on Exhibit No. 9.

A. This is one of the most lucrative markets for the average wholesaler in lumber in this area, and certainly anything which is done along the line of opening up these rates to do away with the restriction here will benefit Pacific Mutual Door Company.

Mr. Rockwood: Mr. Lutterman, he lays his hand on the map and says, "This is the most lucrative market" and—

The Witness: I am mentioning it specifically—

Mr. Maguire: If I could get in this thing a moment, Mr. Lutterman asked a specific question as to a specific territory, and whatever gestures the witness makes don't make any difference.

Mr. Rockwood: I don't know what territory he is talking about.

Mr. Lutterman: I asked about a specific territory. I [fol. 291] think he understands and you understand. He previously testified that generally, his marketing area is everything east of the western borders of North and South Dakota. Now, I prefaced my question with that geographical description.

Exam. Dishman: In order that the record may be made clear, how far east does that extend?

The Witness: You mean how far east does the business extend?

Exam. Dishman: Yes. He says east of a certain line.

The Witness: We do business all the way east to the Atlantic Coast.

Exam. Dishman: Goes on to New York?

The Witness: Oh, yes.

Exam. Dishman: That area is what you referred to a moment ago?

The Witness: I understood the question to be in regard to this area. My answer is in this area.

Mr. Rockwood: Which area?

The Witness: All right, I am speaking now from Mobridge, no customers west of Mobridge except a few plywood in Billings. Our market begins, roughly, at Fargo and St. Paul. Our accounts out of our St. Paul office number, roughly, 1150 retail lumber dealers. Out of Chicago, our retail dealer accounts number, roughly, 900, a little better than 2000 customers in that area.

Mr. Lutterman: I think that's all the questions I have.

Cross examination.

[fol. 292] By Mr. Rockwood:

Q. You say you have 2000 customers and you referred, I believe, to Fargo as the point where your customers begin and thence east?

A. A point running north and south through Fargo. That's about in that area where our trade begins, yes.

Q. That's about the eastern border of North Dakota and South Dakota. Fargo is exactly on the eastern border of North Dakota across the Red River from Minnesota?

A. Yes, we have a commission office in Fargo which sells throughout that area.

Q. Then, when you are talking about the 2000 accounts in this territory, you mean 2000 accounts in the territory generally east of the easterly line of North Dakota and South Dakota?

A. Speaking of about 2000 accounts served by our St. Paul office and our Chicago office combined, which would fall in this general area of North and South Dakota, Minnesota and into Wisconsin and South Dakota and in the northern part of Illinois.

Q. Have you got any customers at Bismarck?

A. Yes.

Q. Have you got customers at Sioux Falls, South Dakota?

A. Yes, we have a salesman in Sioux Falls, South Dakota.

Q. You are, I take it, quite familiar with the freight rate structure?

A. No, I am not. I know nothing about rates or routings. I am strictly on the sales end of it. I am not a rate man.

[fol. 293] Q. Then, if I infer correctly, you do not know what routes are now available with joint through rates to a point such as LaCrosse, Wisconsin?

A. No, I know nothing about the rate structure or the route structure.

Q. Or other points, just for example, through a point such as, well, take a point local on the Milwaukee of Mason City, Iowa. You don't know what routes are available?

A. No. To be very honest with you, our salesman in Sioux Falls calls or the one in Fargo calls and says, "Here's an order." I take the order if I think I can place it. I will take that order and go out and try and spot the business at one of our mills.

Q. You can't tell us then whether or not the man at Mason City, your customers at Mason City may receive a car from a point on the SP&S via the Great Northern and Northern Pacific to Minneapolis?

A. No.

Q. And thence by another line to Mason City?

A. No, I deal with the sales end of it, and we take the order. If we stub our toe, that's what we have to pay for, and I am sure that our mills don't lose too much sleep over whether we sell it in the right spot or over the right route.

Q. When you use the initials that you buy at the APMI mill at Eugene—

[fol. 294] A. We were sales agent for Associated Plywood Mills for some 15 or 20 years, and, of course, in that area, we still do quite a little business out of there.

Q. APMI means—

A. Associated Plywood Mills, Inc. We no longer have that contract, however.

Q. All right, so that's out of the picture?

A. Yes.

Q. Where do you get your plywood?

A. We still buy from Eugene, two miles or three miles in the Eugene area.

Q. How is it served, by the Southern Pacific or Oregon Electric, or by both?

A. I think some of them are served by both. I don't know just what routes or sidings they have.

Q. From what you said on routes, you can't tell us, then, what routes into the territory we have talked about colored yellow on this map, Exhibit No. 9, on the Milwaukee are available to the territory via the Southern Pacific and Union Pacific?

A. No, not in my capacity. We have a girl in the office who is a secretary stenographer who is a quasi-traffic person, in our office.

Q. Do you know whether or not the Milwaukee itself on the fir lumber that it originates in Washington has any restrictions as to transit on any of the routes east of Spo-[fol. 295] kane, Great Northern, Northern Pacific or Milwaukee, do you know?

A. I don't know the exact details of it.

Q. If there were any such restrictions, you would deplore them, I take it?

A. Yes, I want no restrictions.

Q. You want everything wide open all over the United States by any route where there is a rail connection where you want to head in a car of lumber or plywood?

A. I figure when I ship a car of No. 4 common and 50 per cent is cost to the customer, I think he is entitled—

Q. You want it wide open via any route anywhere in the United States?

A. Yes.

Q. And anything short of that, you think is an outrage?

A. I think so.

Mr. Rockwood: That is all.

By Mr. Torinus:

Q. Mr. Ruddick, I take it you haven't made any applications to the carriers in this area for a more liberal routing, have you?

A. Three years ago when I transferred from the east out here, I became acquainted with the railroad people. We went on record about three years ago on not only restrictive

destinations, restrictive routes, but also on restrictions on certain milling and transit things, and our company is on record with the West Coast Lumbermen's Association and [fol. 296] Western Pine Association as being against anything that is going to restrict the free movement of the wholesaler's activities. We have made no application for any rates. We are not in a position to do that.

Q. When you say you went on record, it was with the West Coast Lumbermen's Association and the Western Pine Association?

A. Yes. I am speaking categorically, not in this particular case, but of the matter of restricting the wholesale lumberman in his transit movements and in his free activities in stopping the car. We do quite a little stop-over business, and we feel very strongly and have for a long time and will continue to feel that way until something is done to open this thing up wide.

Q. And I take it you have made no application to the officials of the SP&S?

A. No.

Q. Or any other railroad for these routes?

A. No, we have not.

Q. You are here in this case at the request of the Milwaukee, are you?

A. I am, yes.

Mr. Torinus: I have no further questions.

Redirect examination.

By Mr. Lutterman:

Q. Mr. Ruddick, to the extent that there are any restrictions under the present tariffs with respect to stopping in transit or diversion to local points on the Milwaukee Railroad which are shown in yellow on Exhibit No. 9, will [fol. 297] you state whether or not it is injurious to your business—

Mr. Rockwood: If your Honor please, that's repetitious. That has already been covered in the direct examination and is improper redirect.

Exam. Dishman: You have covered that, haven't you, Mr. Ruddick?

The Witness: I think I stated that I—

Mr. Rockwood: Please don't answer the question. I objected to the question.

Mr. Lutterman: The Examiner asked him a question. He is entitled to answer the Examiner's question.

Exam. Dishman: You said that you had?

The Witness: I answered in the affirmative.

Exam. Dishman: All right. Anything more?

Mr. Lutterman: That's all, thank you.

Exam. Dishman: Witness excused.

(Witness excused.)

Mr. Merrill: Call Mr. Palmer.

L. H. Palmer was sworn and testified as follows:

Direct examination.

By Mr. Merrill:

Q. Will you state your name and address, sir?

A. My name is L. H. Palmer—

Q. Speak up as loud as you can.

A. —and I live, my home is at Billings, Montana.

[fol. 298] Exam. Dishman: How do you spell your name?

The Witness: P-a-l-m-e-r.

By Mr. Merrill:

Q. What business are you engaged in?

A. I am in the grain business at Geraldine, Montana, which is served by the Milwaukee Railroad.

Q. Will you describe in detail the nature of your business?

A. Buy and sell and store grain that I receive from my farmer customers.

Q. And do you have an elevator located at Geraldine?

A. Yes, I do.

Q. And is that on the Milwaukee Railroad?

A. It is.

Q. And served by no other railroad?

A. No other railroad.

Q. And the town is not served by any other railroad, is it?

A. It is not.

Q. What is the capacity of your grain elevator?

A. 65,000 bushels.

Q. What types of grain do you deal in?

A. Wheat, spring and winter wheat and barley and oats.

Q. Could you state what the volume is which you handle in the course of a year?

A. About 300,000 bushels.

Q. From what area do you purchase your grain, Mr. Palmer?

A. From the area around Geraldine, about 35 miles northeast of Geraldine and about 15 miles to the west.

[fol. 299] Mr. Rockwood: Excuse me, can somebody point out Geraldine to me on this map so we can follow a little more easily?

Exam. Dishman: While they are doing that, how far is Geraldine from Billings?

The Witness: Two hundred miles.

Exam. Dishman: Which direction?

The Witness: North.

By Mr. Merrill:

Q. Is that on the Great Falls branch of the Milwaukee Railroad?

A. Yes.

Q. In your operations, are you in competition with elevator operators who have elevators served by other railroads?

A. Yes.

Q. Where are your competitors located, on what railroads?

A. On the Great Northern.

Q. And what is your nearest competitive point on the Great Northern Railroad?

A. Fort Benton.

Q. How far is that from your location at Geraldine?

A. 28 miles.

Q. Is your grain marketed in the Washington and Oregon area?

A. Part of it.

Q. Approximately how much of your grain moves westward to that area?

A. In 1953 there was 25 cars directed to Spokane and 120 [fol. 300] cars was directed to Lewistown for diversion and orders which went to the West Coast and the other cars went to Minneapolis and Duluth, Minnesota.

Q. Those would be cars in addition to the number you have just named?

A. That's right.

Q. Are there times, Mr. Palmer, when you are bid less for your grain at Geraldine, Montana than what is bid for grain at Fort Benton or other points on the Great Northern Railroad?

A. Yes.

Q. Approximately how much less are you bid on such grain where there is that difference?

A. Practically two cents a bushel.

Q. About how much of the grain which you move westward do you receive bids of two cents a bushel less than what is bid on grain on the Great Northern Railroad, say, at Fort Benton?

A. About 15 per cent of my handling.

Q. Why is it that your grain is bid less than the grain which is sold on the Great Northern at Fort Benton on such occasions?

A. Because the purchaser of this grain has better access to the market on their particular roads than we do.

Q. Do you refer now to the grain which he might purchase at Fort Benton?

A. Purchased on the Great Northern.

Q. All right, sir.

[fol. 301] A. Or shipped over the Great Northern.

Q. In your opinion, would the establishment of joint through rates to all SP&S System points help to remove the cause for the lower prices which you receive for your grain at Geraldine?

Mr. Torinus: I will object to that as to having no foundation. He has shown no particular knowledge of rates.

Mr. Merrill: I will develop that a little further.

By Mr. Merrill:

Q. When you found you were receiving lower prices for your grain, did you make any effort to determine the reason for that?

A. Yes.

Q. And where did you obtain information, if any, as to that reason?

A. From our local railroad agent and also from my commission companies that I do business with in Minneapolis.

Mr. Torinus: Might I ask a question here for the purpose of laying a foundation for objection to this line of testimony?

Mr. Maguire: Wait until he finishes qualifying the witness.

Mr. Rockwood: Why don't you let counsel conduct his own examination?

Mr. Maguire: I will take care of this side of the table.

Exam. Dishman: Are you through with the qualifying part?

Mr. Merrill: Just a moment. I have completed the qualifications at the moment.

Exam. Dishman: What is your question?

[fol. 302] Mr. Merrill: The initial question was whether establishment of joint through rates, such as sought in this proceeding, from Geraldine, Montana to all points on the SP&S System would help to remove the cause for the lower prices which he receives for his grain at Geraldine, Montana.

Exam. Dishman: Did you have a question, Mr. Torinus?

Mr. Torinus: I would like to ask one or two questions for the purpose of laying a foundation to object to that question.

Exam. Dishman: All right.

By Mr. Torinus:

Q. Mr. Palmer, where is it that your grain is sold at a price two cents less, as I understand you, from the price received from your competitors?

A. I sell my grain that is routed west, I sell that on the track at Geraldine.

Q. On the track where?

A. At Geraldine.

Q. On the track at Geraldine?

A. Yes.

Q. Well, where are the purchasers who bid for that grain located? Who are they?

A. I have several commission companies that I do business with.

Q. And are those commission companies located on the west coast or in Minneapolis?

A. They are located in Minneapolis and have offices at Great Falls and Spokane.

[fol. 303] Q. Now, what knowledge do you have at the present time, Mr. Palmer, of the existing joint through rates on grain from Geraldine to points served by the SP&S?

A. We don't have any combination rates that I know of.

Q. You mean you don't have any joint through rates, is that your answer?

A. That would be as far as I know.

Q. Don't you know that you have a joint through rate on grain from Geraldine to Portland, Oregon via the Milwaukee; Marengo, thence Union Pacific?

A. I didn't understand your question.

Q. Do you have a joint through rate on grain from Geraldine, Montana via Marengo, Washington with movement Milwaukee Marengo, thence Union Pacific, do you know?

A. I don't know.

Mr. Merrill: Mr. Examiner, I don't see the relevancy of this question to the one I asked him, what did he find out as to the cause for the lower prices which he receives. I haven't attempted to qualify this gentleman as a rate expert. I don't know why he is being subjected to this cross examination as to his knowledge of the rates which apply.

Mr. Torinus: I just have one or two more questions.
Exam. Dishman: All right, proceed.

By Mr. Torinus:

Q. Then you have no knowledge, I take it, whether or not the establishment of new joint through rates from Ger-
[fol. 304] aldine to Portland in connection with the SP&S will change the existing rate situation from Geraldine to Portland via the Milwaukee and Union Pacific?

Mr. Maguire: May I be heard, Mr. Examiner?
Exam. Dishman: Just a moment. Are you through?
Mr. Torinus: I have asked my last question for the purpose of laying a foundation for an objection,—
Mr. Maguire: I object.
Exam. Dishman: Just a moment, now.
Mr. Torinus: —for the objection which I have made to Mr. Merrill's question.
Exam. Dishman: Let the witness answer that question if he knows.
Mr. Maguire: Could I state an objection?
Exam. Dishman: This goes to the heart of the thing. I want to find out what this witness knows. The rate situation is important.
Mr. Maguire: Yes, of course, it is, but at this juncture Mr. Merrill had not finished his direct examination. Mr. Torinus intervened with some questions as to qualifications. Now, he is going into the merits of the case. I think this is not an appropriate time for it.
Exam. Dishman: I don't think it will hurt the record for the witness to answer this question, and then we will rule on the objection.
[fol. 305] The Witness: Would you repeat the question?

(Question read.)

The Witness: I think my stuff can go into Portland all right. I am not sure.

By Mr. Torinus:

Q. Do you know now whether it can go into Portland under joint through rates via the Milwaukee Railroad to Marengo, thence Union Pacific?

A. I don't know where Marengo is.

Q. Do you know whether you have a joint through rate from Geraldine to Portland in connection with the Milwaukee Railroad and the Union Pacific?

A. No.

Mr. Merrill: Mr. Examiner, we were going to have but one more question when he asked the last one. I think he is abusing the privilege extended.

Exam. Dishman: You have asked several questions to support your objection.

Mr. Torinus: That's right. I now renew my objection to Mr. Merrill's question.

Exam. Dishman: Now we will have to find out what the question was. We will be off the record.

(Discussion off the record.)

Exam. Dishman: On the record.

By Mr. Merrill:

Q. Upon the inquiry which you made, what was the cause you found for the lower prices which were bid on [fol. 306] your grain at Geraldine as compared to the prices bid on grain from the Great Northern point such as Fort Benton?

Mr. Torinus: That was not the question.

Mr. Merrill: That is the question I will now put to the witness in lieu of the one previously asked.

Exam. Dishman: Yes. He didn't answer the other.

The Witness: Because these other railroads have a better tariff to some points that want this particular kind of grain that I have to sell.

By Mr. Merrill:

Q. Did you find anything as to whether the markets to which your grain could move west of Spokane are presently restricted?

Mr. Torinus: Well, I will object to this line of questioning as calling for hearsay.

Exam. Dishman: Well, we will see if the witness knows of his own knowledge.

The Witness: Yes, some points west of Spokane that would—If we had a through rate to Astoria, Astoria is a big market and it would definitely help the situation.

By Mr. Merrill:

Q. Do you know of any consumer of grain in large quantity which is located at Astoria, Oregon.

A. Pillsbury Flour Mills of Minneapolis.

Q. To your knowledge, do they purchase large quantities of grain from your area?

A. Yes, they do. They purchased a good many million [fol. 307] bushels of grain from me in the past in Minneapolis.

Q. What is the outlook in your area concerning the barley crop during the current year?

A. We anticipated a large crop of barley and mostly malting barley. The malting barley, the maltsters will probably have a surplus of malting barley and some of our malting barley will go to feed mixers, and we are going to have a hard time to find a barley market. There is at least a 23 per cent increase, that is, 23 per cent of the wheat land was put into barley.

Q. Would an increase in the number of markets then at which you can market the barley be of benefit to you?

A. It definitely would.

Q. And, in turn, would this result in any benefit to the producer of grain in your area, the farmer or the rancher as he may be called?

A. Well, grain business is rated as one of the highest competitive businesses in the country, and if we would receive more for our grain, it would be passed on to our customers in our area.

Q. So that, if the prices which you received for your grain at Geraldine were equal to those received at the competitive points, that benefit would, in turn, help the producer of the grain in your area, is that correct?

A. That's right.

Mr. Merrill: That is all, sir.

[fol. 308] Cross examination.

By Mr. Torinus:

Q. I would like to ask you a question or two first about Fort Benton, Montana. Do you know whether or not the rates on grain from Fort Benton, Montana apply to the north Pacific coast via the Milwaukee, via the Great Northern out of Fort Benton, thence Milwaukee to Tacoma or Seattle? In other words, does your competitor at Fort Benton have joint through rates in connection with the Milwaukee to the north Pacific coast territory, do you know?

A. I have nothing to do with Fort Benton rates. I am not a rate expert.

Q. I take it you don't know whether he has joint through rates—

A. He has rates.

Q. —in connection with the Northern Pacific?

A. His rate is the same to Minneapolis or Spokane as mine is.

Q. In connection with this marketing of grain in Astoria, Mr. Palmer, are you familiar with the rates and transit application of rates which govern the purchase of grain by various millers, such as the mill located at Astoria? Are you familiar with the circumstances which might dictate whether he would buy grain in a particular area insofar as the transit application at Astoria is concerned?

A. We definitely have a market at Astoria if we could put our stuff in there.

Q. Do you know whether or not, in the event the Milwau- [fol. 309] kee is successful in this case, Pillsbury Flour Mills at Astoria would be able to transit grain purchased on the Milwaukee for destination or disposition to any substantial market, say, out of Portland?

A. The buyer in Minneapolis has told me that would be the case.

Q. You have no knowledge of your own with respect to that, is that correct?

A. No, only that the buyer in Minneapolis, the Pillsbury buyer in Minneapolis told me that he would purchase my grain.

Q. Now, Mr. Palmer, have you ever made application to the SP&S Railroad for these joint through rates?

A. No, I never have.

Q. The rates that you say are desirable?

A. No.

Q. Do you know whether or not the SP&S has ever been requested for those rates aside from the Complaint in this proceeding?

A. No, I don't.

Q. Did the Milwaukee Railroad, in its conversations with you, indicate that this litigation was necessary in order for you to obtain those joint through rates?

A. Yes, they did.

Q. In other words, it was not indicated to you that you could make an application on the public docket and your application would be considered by the railroads on the public docket, and that the SP&S might be willing to join in those [fol. 310] through rates? That was not indicated to you?

A. Well, I am not an attorney and so I don't know anything about filing applications of that kind.

Q. When did you first hear about this case?

A. About two months ago.

Q. From whom?

A. From an official of the Milwaukee Railroad.

Q. He requested you to come here and testify for the Milwaukee in this case?

A. Not the first time that we had our conversation.

Q. He made another visit to you and made that request?

A. He made a visit to me and asked me if I would write to this grain dealers association on the west coast here, asking them what position I should take in the deal.

Exam. Dishman: Speak a little louder.

By Mr. Torinus:

Q. I didn't get the answer, Mr. Palmer.

A. He had an agent at Geraldine contact me and ask me if I belonged to the Northwest Grain Dealers Association —I think that's what the name of it was—and I told him no.

Q. You told him you did not?

A. I did not.

Q. Then did he request you to come here and testify?

A. No.

Q. Well, how is it you are here now today in this proceeding?

A. Because one of the officials asked me to come.

[fol. 311] Mr. Torinus: I have no further questions.

By Mr. Rockwood:

Q. I just want to ask one or two questions about Astoria. That's the mill known as Pillsbury Astoria Milling Company, is it not?

A. Yes.

Q. It's your understanding it is a subsidiary of Pillsbury Flour Mills Company with headquarters in Minneapolis?

A. That's right.

Q. Do you know where Astoria is located with respect to rail transportation?

A. Yes.

Q. It's at the end or near the end of a branch-line extending northerly and westerly of Portland along the Columbia River. That's correct, isn't it?

A. I think so.

Q. What is the outlet for flour milled at the Pillsbury mill for domestic consumption? How does it get out of there, by rail?

A. I don't know anything about that. Some of it may go by boat.

Q. Well, all right, it could be offshore, but for domestic consumption other than offshore water, it would have to come back over the SP&S to Portland, the finished flour, is that correct?

A. I don't know. I don't know those railroads.

Q. Do you know whether transit with backhaul is al- [fol. 312] lowed on all grain that the Pillsbury mills buy at Astoria? Do you know?

A. No, I don't. I think it would be.

Q. If they didn't have a milling and transit privilege on grain from a particular area, it wouldn't be to their advantage to buy flour in that area rather than from an area as to which they do have milling and transit privileges to Astoria, is that correct?

Mr. Merrill: The question is objected to since the witness disclaimed knowledge as to the operations.

Exam. Dishman: Well, your answer to that would be "no"?

The Witness: State the question again.

(Question read.)

Mr. Rockwood: That should be "grain" instead of "flour".

Exam. Dishman: Rather than what you said before.

Mr. Rockwood: Yes.

The Witness: No, I don't know of any mill that purchases grain that does not have a transit privilege for their flour because of trucks hauling stuff in and trucks will take six cents a bushel less for their truck haul and will haul grain from our place to Minneapolis for six cents a bushel less than the railroad will, and the railroad has a transit privilege and the trucks don't.

By Mr. Rockwood:

Q. This line of questioning was directed at the statement of the witness that Astoria would be a big market for mill grain if he could get these joint through rates. It wouldn't [fol. 313] do you any good to get the joint through rates to Astoria from Geraldine unless you had milling and transit privileges to Astoria?

A. Probably for some of our feed, at least.

Q. Unless you had milling and transit, it wouldn't do you much good?

Mr. Merrill: I believe he answered it, counsel.

The Witness: If we shipped feed down there, it would.

By Mr. Rockwood:

Q. If you shipped whole grain, it wouldn't do you much good unless you had milling and transit privileges to move the flour out?

A. I just talked about feed now.

Q. I know, but I am asking about grain and flour.

A. Barley is grain.

Mr. Merrill: Mr. Examiner, the value of transit is to the consumer or the processor at Astoria, not to the witness here, and whether or not there is transit available and doing this gentleman any good is beside the point.

Mr. Rockwood: I won't pursue the point, but the theory that I have in mind in asking this line of questions is that if, from a particular origin territory to a particular milling point, if there is no milling and transit privilege at that milling point for the grain from that territory, they won't buy in that territory.

The Witness: Just for your information, Pillsbury is a [fol. 314] big feed manufacturer all over the country. They have some 14 plants, and they have one supervisor that supervises those 14 plants all over the United States, and Astoria is one of the feed plants.

Mr. Rockwood: I have no further questions.

Exam. Dishman: Any other questions?

Redirect examination.

By Mr. Merrill:

Q. If the consumer at Astoria were granted the same milling and transit privileges as he receives from grain originating on Northern Pacific and Great Northern points, there would be no objection to the use of your grain from Geraldine, Montana, would there?

Mr. Rockwood: I object on the ground it is immaterial and not within the issues raised by the Complaint. There is—

Mr. Maguire: Those are the very questions you asked him.

Mr. Rockwood: Will you be quiet?

Mr. Maguire: No, I won't.

Mr. Rockwood: Go ahead and make your speech.

Exam. Dishman: Go ahead.

Mr. Rockwood: There is nowhere in the Complaint that the SP&S be required to establish transit privileges at Astoria, Oregon on grain originating in Montana on the Milwaukee.

Exam. Dishman: What was the purpose of your question?

Mr. Merrill: I think it is as purposeful as any which have come from the other side of the table in the past few minutes.

[fol. 315] Exam. Dishman: As this is direct examination, I just wondered what—

Mr. Merrill: As I understand it, Mr. Rockwood was trying to show there is some objection to the use of this grain from Geraldine because of the lack of transit privileges. This Complaint is directed against the SP&S System, and I merely inquired, then, if they granted the same privilege as they grant to the shippers of Great Northern and Northern Pacific origins—

Mr. Rockwood: There is nothing anywhere in the Complaint that covers that.

Exam. Dishman: Let the witness answer. There has been a lot about transit here. We will see what he knows about that. Do you have an opinion?

The Witness: Of this transit?

Exam. Dishman: Yes.

The Witness: I don't know whether there is a transit rate.

Exam. Dishman: He asked you if there should be the same transit privilege—

The Witness: It would be a benefit to us if there should be the same privileges.

Exam. Dishman: Any other questions?

Mr. Rockwood: No.

Mr. Merrill: That's all. Thank you.

Exam. Dishman: Witness excused.

(Witness excused.)

[fol. 316] Exam. Dishman: We will now take a short recess.

(Short recess taken.)

Exam. Dishman: The hearing will come to order, please. Do you have another witness?

Mr. Merrill: Mr. Bailey, please.

RAY BAILEY was sworn and testified as follows:

Direct examination.

By Mr. Merrill:

Q. Will you state your name and address?

A. Ray Bailey, White Sulphur Springs, Montana.

Q. How do you spell your last name?

A. B-a-i-l-e-y.

Q. In what business are you engaged?

A. Feed and grain and coal business.

Q. And what is the nature of that business in detail, Mr. Bailey?

A. Buying wheat and oats, barley, and shipping them out.

Q. Where is your business located?

A. At White Sulphur Springs, Montana.

Q. What railroad serves White Sulphur Springs?

A. It's the White Sulphur Springs and Yellowstone Park Railroad, connects with Milwaukee.

Q. Is the town served by any other railroad?

A. No, sir.

Q. Do you have an elevator in that location?

[fol. 317] A. Yes, sir.

Q. What is the capacity of that elevator?

A. 20,000 bushels.

Q. What types of grain do you handle in that elevator?

A. Spring wheat, winter wheat, oats, barley.

Q. What is the approximate annual volume you handle there?

A. In 1953 I shipped 22 cars to Spokane.

Q. Now, from what area do you draw the grain to that elevator?

A. About 45 miles north and 25 miles east and south and west.

Q. Going back for a moment to the volume which you handle in bushels, what would be your annual volume which moves through the elevator?

A. Last year it was around 50,000 bushel, I believe it was.

Exam. Dishman: Just a moment. Did you state the name of your company and your position with it? You may have, but I might have overlooked it.

By Mr. Merrill:

Q. Will you state the name of your company and your position with that company?

A. I own the elevator, doing business as Ray's Feed and Grain, and I operate it.

Q. You are the sole owner?

A. Yes, sir.

Q. Are you in competition with elevators located on any other railroad?

A. Yes, sir.

[fol. 318] Q. Where are those elevators located?

A. At Wilsall, Montana on the Northern Pacific and Townsend, Montana on the Northern Pacific.

Q. How far distant are those elevators from you?

A. Wilsall is 49 miles and Townsend is 45.

Q. You mentioned, did you not, that you ship your grain westward from your elevator?

A. Most all of my grain goes west, yes.

Q. And the approximate number of cars you move westward would be how many per year?

A. Last year was 22.

Q. How do you sell your grain?

A. I sell through commission houses in Minneapolis. Some of them have offices in Montana, Great Falls.

Q. Are you familiar with the prices which you receive for grain at your elevator compared to those received by your competing elevators?

A. Yes, sir.

Q. Are there times when the prices you receive at your elevator are less than what is being paid for grain at the others?

A. Yes, sir.

Q. Approximately how much less would that grain bring at your elevator?

A. I would say 15 per cent of the time.

Q. About 15 per cent of your grain brings a lower price [fol. 319] than is paid for grain at the competing elevators?

A. Yes, sir.

Q. And approximately how much per bushel less do you receive on that 15 per cent of your grain?

Mr. Torinus: I will object to that on the ground no foundation has been laid. How does he know what his competitors get?

Exam. Dishman: Where are your competitors located and who are they?

Mr. Merrill: He has already named that, Mr. Examiner.

Exam. Dishman: Do you know of your own knowledge what they receive?

The Witness: Not what they receive. I know what they are paying.

Exam. Dishman: What they are paying for grain?

The Witness: Yes, to the farmers whom I buy from.

Mr. Merrill: Let me clarify it. I think the witness misunderstood my question.

By Mr. Merrill:

Q. The price which you receive from the commission merchant or the commission man as he may be called, for grain in your elevator, do you at any time receive less for that grain than is received by your competitors?

A. Yes.

Mr. Torinus: I will object as no foundation having been laid.

Exam. Dishman: Well, if the witness knows—

[fol. 320] Mr. Merrill: He already testified he knew.

Exam. Dishman: Do you know of your own knowledge?

The Witness: Yes, sir.

Exam. Dishman: You may answer.

The Witness: Yes, sir.

Exam. Dishman: What is it?

The Witness: Last winter at one time they were paying more money for grain than I could sell it for, and for the last seven years, quite often I called in to sell some grain and my commission house will say, "If you were on the Northern Pacific or the Milwaukee, it would get you a couple of cents more."

By Mr. Merrill:

Q. You say, on the Northern Pacific or the Milwaukee. Was the Milwaukee the railroad you meant to use there?

A. I am on the Milwaukee.

Q. You are on the Milwaukee now?

A. If I was on the Northern Pacific or the Great Northern, that they would pay me two cents more.

Q. Two cents per bushel more?

A. Yes.

Q. That's how you know that the competitors of yours located on the Northern Pacific or Great Northern at times receive more for their grain than you receive, is that right?

A. Yes, sir.

Q. Do you know the reason why you would receive less [fol. 321] for such grain than your competitors receive?

A. I asked them why I can't get as good as Wilsall and Townsend. Their freight rate is the same as mine to Spokane or Minneapolis, and they tell me it's due to lack of some through connections on the Milwaukee to compete with the other railroads.

Q. And would that include connections to points on the SP&S System?

A. Yes, sir.

Q. Have your buyers indicated to you that the establishment of joint through rates from your point to points on the SP&S System lines would help to remove the cause

for the lower prices which you receive for grain at your elevator?

A. Yes.

Mr. Torinus: I will object to that question on the grounds the Complaint seeks establishment of rates between the Milwaukee and certain other carriers. I don't believe the Yellowstone White Sulphur Springs Railroad or White Sulphur Springs and Yellowstone Park Railroad is a party to this proceeding. May the answer be stricken, Mr. Examiner?

Mr. Merrill: The Complaint asks "that the defendants establish, put in force, maintain and apply in the future to the transportation of the freight traffic hereinbefore described, between points on defendants' lines and points on the lines of complainant and its connections—"

Exam. Dishman: What was your point, Mr. Torinus, [fol. 322] that the line he is on—

Mr. Torinus: My point is, the railroad he is located on is not a party to this proceeding, that the Commission would have no jurisdiction to establish joint through rates, under a long line of Commission decisions, over the lines of railroads not a party to the proceeding, either as complainants or defendants.

The White Sulphur Springs and Yellowstone Park Railroad is not a party to this proceeding, and the Commission would have no authority, regardless of what is said in the complaint, regardless of what evidence is introduced, to establish joint through rates in this case between the station at which this witness is located and any points on the SP&S System lines.

Mr. Merrill: The testimony of this witness is material to the complaint as it has been drawn. If there is any objection to the parties who have not been added or included here, that is a separate objection. The testimony of this witness, however, is material to the complaint as it exists.

Exam. Dishman: I will let the answer stand for what it might be worth.

Mr. Merrill: May we have the last question?

Exam. Dishman: He answered it. He said "yes".

By Mr. Merrill:

Q. Is there any anticipation of a surplus barley crop in your area this year?

A. Yes. All of our wheat acreage was cut out and planted to barley.

[fol. 323] Q. How important would be the additional markets in the marketing of a surplus grain crop as far as your operations are concerned? Would it be of any advantage to you to have additional markets in which to market a surplus crop?

A. Definitely.

Q. Would this, in turn, result in any benefit to the farmer or rancher who produces the grain?

A. Yes, sir.

Q. Would that be passed on to him?

A. Yes, sir.

Q. In the form of higher prices?

A. Yes, sir.

Mr. Merrill: That's all.

Cross examination.

By Mr. Torinus:

Q. Are you familiar with the level of the rates, as distinguished from whether or not there are joint through rates with the level of the rates from Townsend and Wilsall to the North Pacific coast as compared with the level of the rates from the stations to which you ship?

A. To Spokane they are the same.

Q. To Seattle, are you familiar with the level of the rates?

A. No, sir, my cars are all diverted at Spokane through my commission men.

Q. So you are not familiar with the level of the through rates which you say that your competitors ship under, is that right?

[fol. 324] A. Only the one and that is on the SP&S that Northern Pacific has a through rate and Milwaukee don't have.

Q. When a shipment is moved out Northern Pacific thence SP&S beyond Spokane, there is a through rate via the Northern Pacific to Portland, for example?

A. Portland? I don't know anything about Portland.

Mr. Merrill: We will stipulate that is correct, Mr. Torinus.

By Mr. Torinus:

Q. Do you know how the level of that rate compares with your through rate from the station from which you ship to Portland via White Sulphur Springs and Yellowstone Park thence Milwaukee to Marengo or Spokane thence Union Pacific to Portland?

Mr. Merrill: Object to the question as no showing has been made there is such a rate available.

By Mr. Torinus:

Q. Are you familiar with the level of that rate if there is one available?

A. No, sir, I am not interested in Portland.

Q. What are you interested in as a destination?

A. Astoria. Pillsbury have been big buyers.

Q. Is Astoria a point to which you ship grain?

A. I don't know. In fact, it couldn't go there, so my commission house tells me, because the freight rate prohibits shipping it to Astoria.

Q. Do you know of your own knowledge whether or not any grain is purchased at Townsend or Wilsall for delivery at Astoria?

A. No, sir.

[fol. 325] Q. You don't know that?

A. I don't know.

Q. Is there any other point on the SP&S to which you are interested in shipping grain?

A. Not that I know of, sir.

Q. Now, Mr. Bailey, when did you first hear about this case?

A. About six weeks ago. The Montana Farm Bureau contacted me and asked me if that wouldn't be of interest

to me, this hearing out here, and naturally, it was. I hadn't heard of it before, and then a couple of weeks ago, the Milwaukee Railroad came and asked me if I would care to come out here.

Q. An official of the Milwaukee Railroad asked you to testify?

A. Yes, sir.

Q. Do you know, Mr. Bailey, whether or not the SP&S System lines have ever refused to establish joint through rates from the station to which you ship in connection with the Milwaukee Railroad?

A. I don't know.

Q. Did the representative of the Milwaukee Railroad indicate to you that it was necessary to obtain joint through rates from the station from which you ship to points on the SP&S by formal litigation in this proceeding?

A. It was just one of the ways.

Q. This was one of the ways. Did they indicate there was any other way you could get the through rate you are interested in?

[fol. 326] A. I never asked them, no.

Q. And they didn't tell you?

A. No.

Q. You are here at this proceeding at their request?

A. Well, partly. It was of interest to me primarily before they ever came.

Q. When was it, Mr. Bailey, that you first discovered there were no joint through rates from the station from which you ship via the Milwaukee and the SP&S?

A. When the Farm Bureau was there.

Q. That was about six weeks ago?

A. Yes.

Mr. Torinus: That is all.

Mr. Merrill: No further questions.

Exam. Dishman: Witness excused.

(Witness excused.)

Mr. Merrill: Mr. Clarke.

S. H. CLARKE was sworn and testified as follows:

Direct examination.

By Mr. Merrill:

Q. Mr. Clarke, have you been sworn to testify in this proceeding?

A. I have.

Q. Have you a prepared statement which you wish to submit?

A. Yes, sir.

[fol. 327] Mr. Merrill: With the Examiner's permission, I would like to have the witness read the statement.

Exam. Dishman: All right.

The Witness: My name is S. H. Clarke. My address is Roundup, Montana. I am employed by the Sheridan-Wyoming Coal Company, Inc., as mine manager of their Roundup, Montana mine and properties. This company produces and ships sub-bituminous coal in carload lots. My duties are to manage and to supervise the operation of the mine. Also, to plan our sales operations and to institute our sales policies.

Roundup, Montana, our shipping point, is located on the main line of the Chicago, Milwaukee, St. Paul and Pacific Railroad. Inbound freight consigned to us consists of l.c.l. shipments of mine supplies, machine parts, and carload shipments of mining machinery and equipment. Originating points of these shipments are, for the most part, east of Chicago, Illinois; the volume of such is not great.

Outbound shipments consist of coal in carloads to destinations on the Milwaukee Railroad and connecting lines in the States of Minnesota, North and South Dakota, Montana, Idaho and Washington. Connecting lines are chiefly the Northern Pacific Railway; Great Northern Railway; Butte, Anaconda and Pacific Railway; Chicago and Northwestern Railway; Minneapolis and St. Louis Railway; Minneapolis, St. Paul and Saulte Ste. Marie Railroad; Union Pacific Railroad; and White Sulphur

[fol. 328] Springs and Yellowstone Park Railway. Joint through rates are in effect from Roundup, Montana to many points on these lines. The volume of coal shipments varies from 110,000 tons to 200,000 tons annually.

In this rapidly changing world, it is the responsibility of industry and management to look as far into the future as human foresight will permit and to anticipate those developments that may change the shape of business. We in the coal industry have seen drastic changes in the past quarter century. We look forward to even greater changes in the decades ahead. It is the purpose of our company to make those changes work to our advantage. In times of national distress, it has been proved that our national economy has been closely united with the coal industry.

Shrinking coal markets resulting from competition offered by other fuels, namely, natural gas, oil, wood and wood products, demand that the coal industry expand its marketing area in order to maintain the normal economical output of our mines; this is impossible without reasonable competitive freight rates from all available sources.

Following is a comparison of existing through rates on coal from Roundup, Montana, Red Lodge, Montana, and Sheridan, Wyoming to Astoria, Oregon, Portland, Oregon, East Portland, Oregon and Pasco, Washington, all subject to Ex Parte 175 increase.

The table is headed "To" and "From", "Lump", "Nut", [fol. 329] and "Slack". For instance, to Astoria, Oregon from Red Lodge, Montana, the rate on lump is 675; nut, 655; and slack, 630.

To Astoria, Oregon from Sheridan, Wyoming, the rate on lump is 675; nut, 655; and 630 on slack.

To Portland, Oregon from Red Lodge, Montana, the rate on lump is 596; nut, 576; slack, 551.

To Portland, Oregon from Sheridan, Wyoming, the rate on lump is 596; nut, 576, and slack, 551.

To East Portland, Oregon from Roundup, Montana, the rate on lump is 725; nut, 725; and slack, 725.

To Pasco, Washington from Red Lodge, Montana, the rate on lump is 529; nut, 529; and slack, 504.

To Pasco, Washington from Sheridan, Wyoming, the rate on lump is 540; nut, 540, and slack, 515.

Rates shown above as applying from Red Lodge, Montana to these points are set forth in Northern Pacific Railway Tariff Northern Pacific Railway No. 959-N-ICC No. 9760, routing Northern Pacific Railway to Spokane, Washington and SP&S Railway beyond.

Rates shown above as applying from Roundup, Montana to East Portland, Oregon are set forth in Chicago, Milwaukee, St. Paul and Pacific Railroad Company's tariff CMSTP&P RR No. 13420-H-ICC No. B-7688, routing CMStP&P RR to Marengo, Washington or Plummer, Idaho and Union Pacific Railroad beyond.

Rates shown above as applying from Sheridan, Wyoming to these points are set forth in Chicago, Burlington and [fol. 339] Quincy Tariff CB&Q-GFO No. 6900-N-ICC No. 20267, routing CB&Q RR and Northern Pacific Railway to Spokane, Washington and SP&S Railway beyond.

Following is a comparison of combination rates on coal applying from Roundup, Montana to points on the Spokane, Portland and Seattle Railway with present joint through rates on coal applying from Red Lodge, Montana to the same points. All subject to Ex Parte 175 increase.

Mr. Merrill: Mr. Examiner, may we have the following table copied into the record as though read?

Exam. Dishman: Yes.

To	*From*	*Lump*	*Nut*	*Slack*
Astoria, Oregon	Roundup, Mont.	862	862	862
Astoria, Oregon	Red Lodge, Mont.	675	655	630
Pasco, Wash.	Roundup, Mont.	835	835	810
Pasco, Washington	Red Lodge, Mont.	529	529	504
Vancouver, Washington	Roundup, Mont.	764	764	764
Vancouver, Washington	Red Lodge, Mont.	596	576	551
Bingen White Salmon, Wash.	Roundup, Mont.	902	882	857
Bingen White Salmon, Wash.	Red Lodge, Mont.	596	576	551
Bend, Oregon	Roundup, Mont.	1049	1049	1005

To	From	Lump	Nut	Slack
Bend, Oregon	Red Lodge, Mont.	743	743	699
Portland, Oregon	Roundup, Mont.	764	764	764
Portland, Oregon	Red Lodge, Mont.	596	576	551

By Mr. Merrill:

Q. Will you proceed with the material following that [fol. 331] table?

A. Following is a comparison of tariff mileage from Red Lodge, Montana with tariff mileage from Roundup, Montana to the same points.

Mr. Merrill: May we have this table copied in as though read?

Exam. Dishman: Yes.

From	To	Mileage
Red Lodge, Montana	Spokane, Washington	641.8
Roundup, Montana	Spokane, Washington	614.4
Red Lodge, Montana	Pasco, Washington	787.6
Roundup, Montana	Pasco, Washington	760.2
Red Lodge, Montana	Portland, Oregon	1019.3
Roundup, Montana	Portland, Oregon	991.9
Red Lodge, Montana	Astoria, Oregon	1110.4
Roundup, Montana	Astoria, Oregon	1083.0

By Mr. Merrill:

Q. Will you proceed with the material following that table?

A. In view of the fact that joint through rates on coal applying from points on the Northern Pacific Railway in Montana, and from points on the Chicago, Burlington and Quincy Railroad in Wyoming, to points in Washington and Oregon on the Spokane, Portland and Seattle Railway have previously been established and are now effective, while similar rates applying from Roundup and Keene, Montana, located on the Chicago, Milwaukee, St. Paul and Pacific Railroad to the same destinations on the Spokane, [fol. 332] Portland and Seattle Railway have not been

established, even though the distances from Roundup and Keene, Montana to destinations on the Spokane, Portland and Seattle Railway are less than that of the coal shipping points set forth in the Northern Pacific Railway tariffs, and the coal shipping points in Wyoming set forth in the Chicago, Burlington and Quincy Railroad's tariffs, it is evident that coal shippers at Roundup and Keene, Montana are denied the opportunity to serve this potential coal market.

The establishment of reasonable joint through rates from Roundup, Montana to stations located on the Spokane, Portland and Seattle Railway competitive with rates from other Montana and Wyoming coal shipping stations would permit us to enter this potential market on an even basis.

Coal produced by us at Roundup, Montana is of good quality; it is an excellent fuel for domestic and industrial use; it compares very favorably with other coals produced in Montana and Wyoming. We contend that a reasonable joint through freight rate would be beneficial to both the railroads involved; to ourselves; it will be beneficial to coal consumers in the area, and will best serve the public interests.

Mr. Merrill: You may cross examine.

Mr. Torinus: May we have a few minutes, Mr. Examiner, to confer regarding this statement before we cross examine?

Exam. Dishman: All right.

Cross examination.

[fol. 333] By Mr. Rockwood:

Q. Mr. Clarke, will you turn to the prepared statement to the tabulation on page 3 of your prepared statement, which was not read by you but which was to be inserted in the record by the reporter? Will you tell us how many carloads of coal moved from Roundup, Montana to Astoria, Oregon in 1953?

A. None.

Q. How much moved from Red Lodge, Montana?

A. I don't know.

Q. Did any move?

A. I don't know.

Q. Is there a market for coal at Astoria?

A. I don't know about that.

Q. How much moved from Roundup to Pasco?

A. None.

Q. How much moved from Red Lodge, Montana?

A. I couldn't tell you.

Q. Did any?

A. Not that I know of.

Q. How much moved from Roundup to Vancouver in '53?

A. None.

Q. How much moved from Red Lodge, Montana to Vancouver?

A. As far as I know, there was none.

Q. How much moved from Roundup to Bingen White Salmon in '53?

A. None.

Q. How much moved from Red Lodge to Bingen White Salmon?

A. None that I know of.

[fol. 334] Q. Would your answers be the same with respect to Roundup and Red Lodge with Bend as the destination?

A. Yes.

Q. And would your answers be the same with respect to Portland as a destination?

A. Yes, as far as I know.

Q. On page 2 of your Exhibit where you state rates, you show Sheridan, Wyoming as an origin point in addition to Roundup and Red Lodge. With respect to Sheridan, Wyoming as an origin point, how much coal moved from there to Astoria in 1953?

A. I couldn't tell you. I don't have the records.

Q. Did any?

A. Not that I know of.

Q. Did any move from Sheridan to Portland in 1953?

A. I don't know.

Q. Did any move from Sheridan to Pasco, Washington in 1953?

A. I don't know.

Q. Do you know anything about the movement into these

Oregon destinations that you have listed here, including Bingen White Salmon and Pasco in Washington, the extent, if any, to which coal moved into those destination points from Utah mines?

A. I couldn't give you tonnage. There's no question some of them moved in there because that was their chief source of supply.

Q. Utah is closer by rail than your mines, is it not?

[fol. 335] A. I don't believe it is.

Q. Do you know the mileage?

A. I don't know the mileage from Utah, but I know the rates from Utah are higher than they are from Red Lodge and Sheridan, while our mileage is less than that of Sheridan, Wyoming and Red Lodge, and still the rates from Red Lodge and Sheridan are really lower or as low as those from Utah and southern Wyoming.

Q. How would you characterize the coal? What grade of coal do they produce?

A. Various grades. Some very good coal in Utah.

Q. Some that is bituminous rather than sub-bituminous?

A. Yes.

Q. Is there any grade higher than bituminous?

A. Not unless it's anthracite.

Q. Nothing like that in Utah, no anthracite?

A. That's right.

Q. Do you know the b.t.u. content of the coal from Utah that you would characterize as bituminous?

A. Generally speaking, around 12,400.

Q. What is the b.t.u. of your coal?

A. The b.t.u. there is about 11,000.

Q. What is the b.t.u. of Sheridan coal?

A. I would say 95- or 9600.

Q. What is the b.t.u. of Red Lodge coal?

A. About the same as our coal, about 11,000.

[fol. 336] Q. But none of these people in Red Lodge or Sheridan ship into this market as far as you know?

A. Red Lodge this past year were not operating and from Sheridan, they were operating, but I have no record with me to show, or I had no information as to what coal was shipped into Portland; however, they do have rates, and I would say that some coal went in there from Sheridan.

Q. You say some coal did go in there?

A. I would think it did.

Q. But you don't know?

A. No, I don't know.

Q. You don't know whether there was a single carload of coal from Sheridan came into the State of Oregon?

A. No, I don't, because I don't have the records.

Mr. Rockwood: That is all.

By Mr. Torinus:

Q. When did you first hear of this proceeding?

A. I would say two or three months ago.

Q. From whom?

A. From the president of our company.

Q. When did your company first hear of this proceeding, do you know?

A. I couldn't tell you exactly when they heard of it. I know he came to me and told me that this hearing, that there was going to be a hearing and he didn't know at that time what the date would be, and he asked me to prepare [fol. 337] and come and take part in the hearing.

Q. Was it your understanding, Mr. Clarke, that it was necessary for the Milwaukee to prevail in this proceeding for you to obtain joint through rates from this territory into SP&S points?

A. That was my thought.

Q. How did you get that thought?

A. For the simple reason that we had asked and requested the Great Northern Railway and had made a request of them and the Northern Pacific Railway to establish rates from Roundup to all points on their lines in Washington, Idaho and we were never able to effect that. We never got the rates, in other words.

Q. So that it has been your belief that it's necessary that this formal litigation be terminated in favor of the Milwaukee before there may be joint through rates from Roundup to SP&S points? Is that your impression?

A. That's right.

Q. Now, did you, yourself, talk to Milwaukee officials before coming to this hearing?

A. Yes, I talked to them.

Q. And had considerable conversation with them?

A. We have conversation with them every day.

Q. Did they prepare this statement of yours?

A. They did not.

Q. Did they give you any assistance in its preparation?

A. I asked them for the combination rates applying via [fol. 338] Spokane which I didn't have, and the other rates, of course, I had access to the tariffs, and I asked them to check the actual tariff mileage. I could compute the mileage, but I didn't have the mileage tariffs on these other lines, except the Milwaukee.

Q. They gave you some assistance in the rates and the mileages on this statement?

A. Yes, at my request.

Q. And you are appearing here at the request of the Milwaukee Railroad, made to the president of your company, is that right?

A. No, sir. I am appearing here under the instructions of the president of our company.

Q. I asked you whether or not you were appearing at the request of the Milwaukee under his direction?

A. No, that is not the case.

Mr. Torinus: I have no further questions.

Exam. Dishman: Any more questions?

Redirect examination.

By Mr. Merrill:

Q. Your appearance here, you feel, is in your own self interest?

A. That's correct.

Q. On cross examination did you mean to state you knew that there was no movement of coal into any of these points in Oregon or Washington from Red Lodge or Sheridan or any other points referred to by the defendants in this case?

A. I did not, no. Whether any coal had moved from [fol. 339] those points, I have no record of it and no information as to what coal moved from either Red Lodge or Sheridan.

Q. Do you have knowledge whether any of the points listed in the tables on pages 2 or 3 of your statement, such

as Astoria, Oregon, Portland, Oregon, East Portland, Oregon, Pasco, Washington, Bingen White Salmon, Washington, Bend, Oregon are actual consuming points of coal?

A. The biggest number of them are.

Mr. Merrill: All right, sir, that is all.

Recross examination.

By Mr. Rockwood:

Q. May I inquire who is the president of your company?
A. Mr. Walter J. Johnson.
Q. Where does he live?
A. Acme, Wyoming.

Mr. Rockwood: That is all.
Exam. Dishman: Witness excused.

(Witness excused.)

Mr. Maguire: One more witness, Orlo Bagley.

Orlo Bagley was sworn and testified as follows:

Direct examination.

By Mr. Maguire:

Q. Where do you live, Mr. Bagley?
A. Cottage Grove, Oregon.
Q. And in what business are you engaged?
[fol. 340] A. Ship poles and piling.
Q. Are you connected with any corporation engaged in that business?
A. The Daugherty Piling Company.
Q. And in what capacity do you serve the Daugherty Piling Company?
A. Co-owner.
Q. How long have you been engaged in your present business?
A. Since 1936.
Q. Will you state what pile yards or pole yards—I don't

know which is the right term—are owned and operated by the Daugherty Piling Company and where they are located?

A. We have two yards on the Oregon Electric between Lebanon and Sweet Home and five on the Southern Pacific, well, they are located south of Eugene.

Q. And with respect to the—now, is a pile yard or pole yard a location where piling and poles are prepared or manufactured from the timber, or where it is stored? Which is it?

A. It's a concentration proposition. In other words, you haul them in there to ship out.

Q. Do you buy this piling and poles from loggers, or do you do your own logging on that?

A. Bought.

Q. Now, in the sale of poles and piling, do you deal entirely in what is called firm sales or firm order sales?

A. Yes.

[fol. 341] Q. And with what types of business do you deal as purchasers of your product?

A. Oh, we sell to contractors, the creosoting plants—well, that's about the people who use them.

Q. And when you get an order from one of your customers for poles or piling or both of them, in the ordinary conduct of your business, can you fill that order out of any one of your yards, or is it necessary to make up the order from different yards?

A. Well, that would depend, if it's one carload, it would depend on the stock available and the kind of an order it was. The timber is not the same all over, and we get different lengths in different yards.

Q. I see.

A. If it was a large order, we would probably ship out of several different yards in order to do the job.

Q. Well, is it possible, or ordinarily in your business, if you get an order from a customer in territory, for example, that could be reached on competitive rates by the Southern Pacific, would it always be possible to fill that order out of your yards which are located on the Southern Pacific?

A. Not always, no.

Q. And now I think when I was talking to you just a few minutes before you went on the stand, to find out what

your testimony would be, I showed you this map here, did I not?

A. Right.

[fol. 342] Q. Which is marked Exhibit No. 9, and called your attention at that time to the Santiam Branch of the Oregon Electric, SP&S System, which is marked in red over there which indicates that it has no rates to any place on the Milwaukee, joint through rates, except to Mobridge, South Dakota, and in filling your orders, do you do business in the Dakotas and Montana?

A. We have in the past, yes.

Q. And are you interested in maintaining that market as orders come in or demands come in in the future?

A. Definitely. Definitely.

Q. And in order to fill an order from a local point on the Milwaukee in Montana or the Dakotas, so far as your operation is concerned, is it ever necessary for you to pay an additional, local rate in order to get the shipments to destination?

A. We have done that in the past.

Q. And are you familiar with the proposal of the Milwaukee Road in this case wherein we asked for joint through rates with the SP&S, competitive through rates from all points on the SP&S System to all points on the Milwaukee and their connections?

A. Yes.

Q. Now, would competitive through rates from, particularly from your yards near Sweet Home, between Lebanon and Sweet Home, would it be desirable from your point of view to have these through rates, competitive through rates, together with the necessary through routes to carry those rates?

[fol. 343] A. Well, it would certainly be to our advantage, yes.

Q. I don't think I asked you about the relative volume of production or trends of production as between your yards which are now located on the Southern Pacific and those which are located between Lebanon and Sweet Home. Could you tell us about that?

A. Well, right now, we are having better luck on production into those yards than we are on the ones on the Southern Pacific.

Q. That is, you mean the ones between Lebanon and Sweet Home?

A. Those two yards, yes.

Mr. Maguire: That is all.

Cross examination.

By Mr. Rockwood:

Q. Is it fir piling for the most part that you produce?

A. That's right, entirely fir.

Q. No cedar piling?

A. No.

Q. Fir piling is much improved by the creosote treatment?

A. Oh, yes.

Q. And you ship to creosoting plants. How many carloads did you ship out of your Weldwood, Oregon yard last year over the Oregon Electric?

A. Well, if I had known you were going to ask me a question like that, I would have had an answer for you.

Q. Was it more than three?

[fol. 344] A. Oh, yes. Yes.

Q. Out of that one yard. You've got another yard at Narrows?

A. That's right.

Q. Well, I am just limiting it to the Weldwood yard. Do you know how many there were out of the Weldwood yard over the Oregon Electric?

A. They are all over the Oregon Electric. That yard is located on the Oregon Electric.

Q. Over the Oregon Electric east of Spokane, do you know?

A. I couldn't tell you.

Q. Do you ship to California?

A. Well, the only way we do, on certain points we can go out of there OE-SP&S-GN-Western Pacific. If the point is on some other spot, we have to pay a local rate.

Q. How many cars did you ship out of your yard at Narrows in 1953, do you remember?

A. Oh, no. I would hate to guess right now because it would be a guess—40 or 50—oh, more than that, I guess.

Q. Do you have any trouble—you've got plenty of joint through rates east of Minnesota Transfer, haven't you?

A. East of Minnesota Transfer?

Q. Yes.

A. I suppose so.

Q. Via the Northern Pacific and Great Northern?

A. Yes.

[fol. 345] Q. You have all the joint through rates you need east of Omaha via the Burlington, haven't you, and the Laurel Gateway?

A. Yes, I suppose so.

Q. And via Minnesota Transfer, you can reach points local to the Milwaukee to the major portion of eastern Iowa, can't you, and points east of there?

A. Well, east of Iowa?

Q. The eastern half of Iowa.

A. We have had some trouble to some points in there that I can remember. I can't tell you what they are exactly, but we have to kind of watch, I know.

Q. If the rate situation were changed on the Santiam Branch of the Oregon Electric so that the Santiam Branch on this Exhibit No. 9 were made yellow instead of red, then your troubles would evaporate, would they not?

A. Well, if you mean by that that those rates would apply—

Q. To all points on the Milwaukee, joint through rates to all points on the Milwaukee colored yellow on this Exhibit No. 9.

A. Well, if you could ship into those points at whatever the through rate is, the answer is "yes".

Mr. Rockwood: That is all.

Redirect examination.

By Mr. Maguire:

Q. And if the relief were granted that is asked for in the complaint, would your troubles evaporate also?

A. I think so.

[fol. 346] Q. Have your troubles evaporated by reason of any action on the part of the SP&S so far as you know, to place the Sweet Home Branch on a competitive basis? Do you know of any such action?

A. No, I do not know of any.

Mr. Rockwood: May I ask on further recross—
Mr. Maguire: Just wait until I get through.
Mr. Rockwood: I apologize. Proceed.
Mr. Maguire: Yes.

By Mr. Maguire:

Q. I don't think I asked you how many loads, as distinguished from cars, that you ship on the average per year.
A. About 500.
Q. At the present time?
A. Yes—except this year. Put it that way.
Q. Is this a good average year in your operation?
A. This year?
Q. Yes.
A. Very poor.
Q. And do you have any estimate as to the average, say, for the decade of the 1940's, those ten years?
A. We averaged about 1000 cars a year.
Q. At that time?
A. Yes. That's loads in cars because we ship lots of double loads. It takes two cars. Railroad people talk about cars; we talk about loads.

[fol. 347] Mr. Maguire: With your indulgence, Mr. Examiner, there are some questions I wish to ask which I overlooked on direct, which I would like to ask the witness at this time, though this is redirect.
Exam. Dishman: All right.

By Mr. Maguire:

Q. What kind of equipment do poles and piling have to move on?
A. Open cars, mostly flat cars.
Q. Can gondolas be used?
A. To a certain extent. A lot of customers don't like to unload them so they request flat car loading.
Q. Will you state what the situation is with regard to the constant, regardless of season, the constant availability of the equipment which you need to ship? Do you run into any periods of tight car supply?

A. Well, almost every year late in the summer, August, September, October, the car supply seems to go somewhere else.

Q. And to the extent the car supply can be augmented, would that be desirable from your point of view and your business?

A. We certainly would be interested in additional cars during the time we are short.

Mr. Maguire: I am sorry, Mr. Rockwood, that I interrupted you, and the witness is yours.

Recross examination.

By Mr. Rockwood:

Q. You had no car shortage in '53?

[fol. 348] A. I don't believe we did.

Q. All the orders were filled promptly?

A. As far as cars were concerned, probably, yes.

Q. Have you ever filed a request with the rail carriers, with officials of the Oregon Electric or with any bureau of rail carriers requesting that the rates off the Santiam on lumber eastbound be made on the same basis as the rest of the SP&S?

A. No.

Q. Mr. Maguire asked you a question. I will not attempt to interpret it, but the implication I got from it was the SP&S had never voluntarily offered to give you those rates off the Santiam. Do you know whether or not a proposal was made by the SP&S at the completion of the construction of the Santiam Branch in 1931 or thereabouts, that the rates off the Santiam Branch, newly constructed, be made on the same basis as the rest of the SP&S back in this very territory?

A. I didn't know anything about it.

Q. Of course, you do not know what carrier, if any, was responsible for the fact that the rates did not become effective?

A. No.

Q. When did you hear of this case, Mr. Bagley?

A. Oh, it's a couple of months ago, I would say.

Q. By whom were you informed of the fact?

A. Mr. Brett of the Milwaukee, who calls on us down our way.

Q. And he explained this situation to you as you have [fol. 349] described it on the stand and with respect to the applicability of the rates?

A. He told me there was some movement to try to work it out.

Q. And he solicited your support?

A. Asked me if I could do some good.

Q. And you are here at the request of the Milwaukee?

A. That's right.

Q. And you had never, prior to that interval of two months ago, made any effort with the SP&S to get the rates in?

A. No, I never, well, I mean, as far as we are concerned, anyway. We just go along. We are pretty busy anyway.

Q. But you weren't too busy to come to Portland at the invitation of the Milwaukee?

A. I can explain that. I was here anyway.

Q. What?

A. I was coming up to Portland today anyway.

Mr. Rockwood: Well, that's all right. That is all.

Redirect examination.

By Mr. Maguire:

Q. Just one more question, Mr. Bagley: Were you also interviewed with regard to this case by representatives of the SP&S or the Great Northern?

A. No.

Q. Well, you must be one that they skipped.

Mr. Maguire: That is all.

Exam. Dishman: Witness excused.

(Witness excused.)

[fol. 350] Exam. Dishman: We will be off the record.

(Discussion off the record.)

Exam. Dishman: We will now recess until 9:30 Monday morning.

(Whereupon, at 4:40 p. m., an adjournment was taken until 9:30 a. m., Monday, June 28, 1954.)